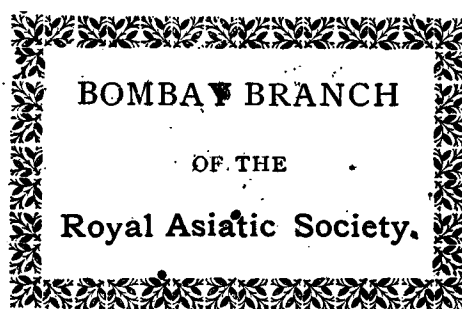


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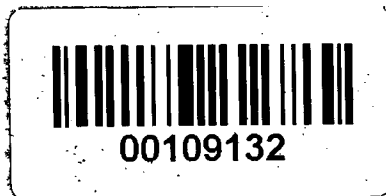
ROYAL COMMISSION

ON

DIVORCE AND MATRIMONIAL CAUSES

VOLUME II.

Presented to Parliament by Command of His Majesty.



109132

LONDON:

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PRINTED BY

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1912.

[Cd. 6480.]

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ROYAL COMMISSION ON DIVORCE AND MATRIMONIAL CAUSES.

MINUTES OF EVIDENCE

TAKEN BEFORE THE

ROYAL COMMISSION

ON

DIVORCE AND MATRIMONIAL CAUSES.

Days 18 to 26.

Winchester House, St. James's Square, London, S.W.

EIGHTEENTH DAY.

Monday, 23rd May 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The LADY FRANCES BALFOUR.
The Hon. LORD GUTHRIE.
Sir WILLIAM R. ANSON, Bart, M.P.

Sir LEWIS T. DIBDIN, D.C.L.
His Honour JUDGE TINDAL ATKINSON.
EDGAR BRIERLEY, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

(*Chairman.*) My Lord, my Lady, and Gentlemen: On resuming our duties we remember that we do so under the shadow of a great national loss. The Royal Commission was issued under his sign manual by our late most gracious, beloved, and deeply-lamented Sovereign, King Edward the Seventh, whose death has filled the world with grief. He now rests in peace, but his name will always be enshrined in the hearts of his people as that of a great monarch, whose constant endeavour was to promote in every way their happiness and welfare. Our duties will be continued under His Majesty King George V., upon whose shoulders has fallen with tragic suddenness the burden of this mighty

Empire. We trust that he may have health and strength to bear that heavy burden through a long and prosperous reign, and we are confident that he will maintain the high traditions which he has inherited, and that his life will be devoted to the public good. It must be the earnest endeavour of those who have duties to perform under him, to perform them faithfully and conscientiously. It seems appropriate on an occasion such as this to recall that our late King, when Prince of Wales, sat as an ordinary member of a Royal Commission upon the Housing of the People, whose report formed the basis of subsequent legislation.

Mr. WALTER JOHN GRUBBE called and examined.

12,214. (*Chairman.*) You are the stipendiary magistrate of East Ham?—Yes.

12,215. You have been good enough to favour us with a proof based on your experience in that capacity. The first question you deal with is the question of conferring jurisdiction on local courts. Will you tell me what your view about that is?—Well, I think that jurisdiction in divorce might be conferred with advantage on the county court, or on stipendiaries in their own jurisdiction. With regard to stipendiaries, they are brought constantly into contact with the class who would be seeking relief; they are dealing with them every day. Most of the applicants for advice are people of this class, and a large proportion of those applications relate to questions of husband and wife. The magistrate gets a considerable insight into the habits and surroundings of the people who come before him. I know there are some, and some who have given evidence before the Commission, who think that rather a disadvantage, but that is not my opinion. I think that a magistrate in these circumstances is less liable to be deceived, and that the danger of collusion would be lessened. But elsewhere, in the country, in more

scattered districts, some local court should be established, and I cannot imagine a better one than a county court.

12,216. I see from your proof you think that the proceedings should be taken at fixed times?—Well, yes, not too long or too short.

12,217. Several times a year?—Several times a year, I thought.

12,218. Is that with the object of getting through the work that comes on without any break in it?—Partly; and partly I would never quite like to hurry such a matter as a divorce. I think there should always be a certain time between the proceedings being commenced and their coming into court.

12,219. I suppose you would not like to see it thrown in with the ordinary day's work of petty assaults and such matters as that?—No.

12,220. You have sketched out some points as to the procedure. The first, apparently, is that the parties should be required to file their pleadings in the High Court?—Well, I think that is a mistake. I did not observe that till now. That is not what I meant. My idea was this. I think what is subsequently said

23 May 1910.]

Mr. W. J. GRUBBE.

[Continued.]

will probably bear me out; but at any rate what I mean is this—

12,221. We will leave out the word "High"?—Yes, I think that proceedings might be commenced in the local court. I think that people who desire divorce might be required to certify that they had not beyond a certain sum a week, or did not possess property beyond a certain value in all. And what seems to me a very fair amount would be 4*l.* a week, or something like 150*l.* in all; and that they should then be required—

12,222. One hundred and fifty pounds a year?—No; if you take the lump sum, about 200*l.* a year. A lump sum of property or so much a year.

12,223. That they should be required to file a short pleading?—That they should be required to file a sort of pleading showing the ground on which they ask relief, and the facts and the dates.

12,224. You suggest that they should be supplied at the local court and filled up at the local court?—Yes; that pleading need not be much longer than many of the summonses now issued at a police court.

12,225. Would you advocate trial by jury?—Yes, I think if either party desired it there should be trial by jury. There is a rough and ready justice about a jury which appeals to the English people somehow.

12,226. That would not be possible in your own stipendiary court?—No, if a jury were desired by either side I should have the case remitted to the county court.

12,227. Then your proposal would involve concurrent jurisdiction?—Yes.

12,228. Then you say in the case of a decree nisi the papers should be forwarded to the King's Proctor?—Yes, that is a safeguard against collusion which I thought would be right.

12,229. Then you deal with the objection based upon proceeding *in forma pauperis*. What is the point on that?—Well, I think proceedings *in forma pauperis* under the present system hardly assist at all. The expense in most cases of getting to London and bringing the necessary witnesses is too great, however small may be the actual fees required to be paid. And there is another matter connected with that which I think is not sufficiently appreciated by those who advocate any other method of reform than a local court. That is the danger of absence from work. Such absence may frequently mean not only loss of wages, but at least the risk of loss of employment to the absentee; and especially when, as now, there are plenty of competitors to take his place.

12,230. You think there is danger of that with even two or three or even a day's absence?—Undoubtedly; I have seen it over and over again. Of course, in the case of a highly skilled workman whose services were extremely valuable the danger would be comparatively small, but with the ordinary workman it is different. I do not say his dread is always justifiable, but it exists.

12,231. And such risk and danger is obviously diminished if he is only away for a short time at a local court?—Certainly; but if, as I have seen over and over again, there is this dread of absence of work in the outskirts of London, it must be far worse in the country, where one would have to be absent for a much longer time to get to the London Divorce Court.

12,232. The next matter is the question of the separation orders. First of all, how long have you been at East Ham?—Four years; since 1906.

12,233. Do you get a good many cases of separation orders at East Ham?—I get a number of applications, and in addition to those I get applications as to the relations between husband and wife quite apart from the separation order. I believe it is the case at most of the stipendiary courts, certainly it is at mine; you get many women coming to ask advice again and again.

12,234. What do you say with regard to the stipendiary magistrates having their present jurisdiction as to separation?—I should be very sorry to see it taken away, and I think separation orders very useful; they enable people to live apart who find it impossible to live together in any sort of comfort, and the relief they afford in that way is almost immediately available.

12,235. Do you think it right that that jurisdiction should be retained so as to allow of the order being a permanent order?—No, I am against permanent orders except in very extreme cases.

12,236. Would you give us a little fully your reasons for that, as it is a very important point?—I think this: I would enable those who have the power to grant the orders to grant them for a certain time; that period would allow time for reflection, and I think that if the parties subsequently came together again (which is a thing that constantly happens) they would be more likely to exercise forbearance to each other in the future and to arrive at some *modus vivendi*.

12,237. Have you formed in your mind the extent of the period for the order?—I think six months, and I would have it renewable after; that from time to time; but if after a certain time there appeared to be no prospect of reconciliation I would have a divorce if either party desired it. This would not only prevent immorality, but would allow a large number of children who at present have to bear the stigma of illegitimacy to be born in wedlock.

12,238. Do you mean by that that if there is a separation for a long period the tendency is to form other connections?—Certainly. I have not the slightest doubt about it.

12,239. From what you have seen and heard?—Yes.

12,240. This is a point that has been very much put before us. In what form would you make the order renewable, on the application of the injured, or how?—I think whoever put the order in force might be allowed to exercise a discretion.

12,241. But you mean on application?—Yes, on the application of the holder of the order.

12,242. Either on the old evidence or fresh evidence, because there would be practically no fresh evidence if they had lived apart all that time. It would be practically the evidence of the condition existing at the time of the application for renewal and not fresh acts of wrong necessarily?—No, I would even allow it without fresh evidence at all; but I would have a hard and fast time which neither party should be able to extend, and where divorce, if either party wished it, should take place.

12,243. You think that after some time, when the test of time had been applied without prospect of reunion, you would give the remedy of divorce?—Yes.

12,244. But would that be on the cause of granting the original order because the divorce would then be on some ground which was the subject of the original order? It is not clear at present that it should be for the same causes as those for which the general Act granted them?—Well, take the instance of adultery and desertion. I certainly would diminish the length of time now necessary for that from two years considerably—to, say, even six months. I am supposing there would be an alteration in the present law.

12,245. You mean that if the order was originally made on a ground which would be the subject of a divorce, if the proper time elapsed or the proper cause existed, you would convert the separation order, after consideration and due time, into a divorce?—Yes.

12,246. On the application of either side?—On the application of either side.

12,247. Would you think from your experience that that permanent dissolution of the marriage tie should be made by a magistrate or a county court?—By either. My view is the magistrate's jurisdiction, only in populous places; it would not extend outside.

12,248. You have made that plain. That means stipendiary magistrate?—Yes; and of course those who always do sit in populous districts, and who sit every day.

12,249. Yes, I think that follows. Your population was about 96,000 formerly?—Yes.

12,250. And now believed to be 140,000 to 150,000?—Yes, it is increasing very rapidly.

12,251. It is a working and wage-earning people?—Yes.

12,252. Would you give your figures for 1907, 1908, and 1909 as to orders for maintenance and separation?—The number of applications was 36.

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Mr. W. J. GRUBBE.

[Continued.]

12,253. I have 76?—Yes, in the three years the number of maintenance and separation applications was 76; the number in which orders were made was 36. The number in which applications were dismissed was 11, and the number in which they were not proceeded with 29. That made 76 altogether. Of the 36, 25 were for separation and 11 for maintenance only; and of those 36, seven were on the ground of desertion, seven persistent cruelty, six non-maintenance, and the remaining six on the ground of habitual drunkenness under the Licensing Act of 1902; and of the last six orders three were made against women.

12,254. In the scheme you sketched a short time back were you only considering the case of applications made by women?—No.

12,255. Would you give correlative rights?—Yes.

12,256. Exactly the same?—Yes.

12,257. As to those 29 which were not proceeded with, you suggest that many of them were probably cases where the parties became reconciled before hearing?—Yes.

12,258. Besides these 76 cases did you have a number of applications?—Oh, yes, every day one finds a number of applicants waiting to come and ask for advice.

12,259. What is the general point that they come about?—Well, master and servant, wages—

12,260. But I mean on this matrimonial matter?—Well, mostly women who want separation orders, who complain that they have been knocked about or deserted, who have orders and cannot get the maintenance; in the case of men, to know what to do if their wives have left them, and so on.

12,261. Have you found from those applications that underneath them lie cases in which divorce would be a proper remedy?—Oh, yes, many times, I think. Well, not very many, but a certain number of times, I have not the slightest doubt.

12,262. Tell us in your own way what takes place about them?—Well, they are very poor people and they really cannot afford even to take proceedings *in formâ pauperis*. I believe once in a very extreme case (I have again and again questioned applicants), once in a very bad case indeed, a workman living in the neighbourhood of London did at last make up his mind to try and get a divorce; he has now got, as a fact, a decree nisi; but in three or four other cases it has surprised me rather that the applicants have not gone for divorce *in formâ pauperis*, but they have not, and, as I tell you, one of the great influences against it is the dread of absenting themselves from their work; they are so afraid of losing their place.

12,263. Do you think, resulting from what you are telling us, that if there were a local facility people such as you mention would go for divorce?—Yes, I think they would.

12,264. Your next point is about the publication of reports of matrimonial causes, and my proof is blank. I do not know whether you have formed any view or do not desire to express it?—No, I do not know that I have formed any particular views. I think the newspaper reports, as a rule—those that I have seen—do not transgress particularly. Now and again; but, after all, if they do go too far, they might bring themselves within the law.

12,265. With regard to amendments of the law of divorce, and procedure and practice, would you tell us what views you have formed upon that head?—Well, as I said before, I should like to see the two years limit now necessary in the case of desertion and adultery reduced to one year or even less, provided the desertion is what is called, I believe, in Scotch law malicious desertion; intentional desertion is, I think, the equivalent word.

12,266. That is the question on the limit of time?—That is the question on the limit of time.

12,267. Do you think that change would be an advantage?—Yes, I do. The two years now necessary in the case of a woman in the poorer classes would be, or might be, and very often would be, two years of semi-starvation. Of course, women in the better classes, or wealthier classes, such as go to the Divorce Court now, have their friends to go to for those two years, and

life is endurable, but in the case of a poor woman it is not so.

12,268. You mean living from hand to mouth requires more rapid action than those cases where the women can keep themselves while the trouble lasts?—Yes.

12,269. Then you mention legitimacy?—There are 40,000 illegitimate children in the year; that is the average, I think. I think if the law of divorce were extended a great many of those which are the result of illicit unions, sometimes between husbands and strangers, and sometimes wives and strangers, would be reduced.

12,270. Does your experience enable you to say that the separations do produce these adulterous connections?—Yes, I distinctly think they do. I know of cases where the husband and wife have quarrelled and separated and both have formed adulterous connections and both have children.

12,271. Then the next point is one which I was about to ask you, and that is the view that you wish to express about malicious desertion. I understand on that ground alone is—?—On that ground alone, four years' malicious desertion, assimilating our law to that of Scotland and many other countries. Some other countries have even a shorter term.

12,272. Yes. You have been telling us that it is necessary for the poorer classes to act with some promptitude as they must live?—Yes.

12,273. Well, take the case of a woman who is deserted by her husband?—Yes, I have said here four years, and I have listened with interest to the evidence of other witnesses who have touched on that subject. A great many of them have said three, and one or two have said two should be the limit when there is no adultery at all for malicious desertion. I believe in many countries it is two years. In Norway it was three, but I understand it has been reduced lately.

12,274. Would your view be that the four years is based on some length of time in order to be sure of that, and you would have that reduced?—Yes, I would have that reduced if it could possibly be reduced. I think the law of Scotland, if I may say so, is much more sensible than ours in that respect.

12,275. (Mr. Brierley.) I understand really you propose that in cases where stipendiary magistrates exist the jurisdiction of the stipendiary and county courts should be concurrent?—Yes.

12,276. Do you find a great number of cases where the parties come together again after the separation order is granted?—Yes.

12,277. Do you think that is desirable?—Well, I have known it act very unhappily and I have known it a great success—completely successful.

12,278. I would suggest that if the same court granted the separation order and also granted divorces, it would result in many cases of applications for divorce being made where really the granting of a separation order would be more desirable?—It might occasionally.

12,279. I suggest to you many women, for instance, might ask for divorce, if they could do so to a stipendiary magistrate, when really a separation order might be more desirable in view of the constant reconciliations?—Yes, but I think the stipendiary would exercise discretion.

12,280. He might not be able to if the grounds for divorce existed. He might give advice?—But by an alteration of the law you might give him discretion.

12,281. Certain grounds have been peremptory, but you would alter that?—I would give him a very wide discretion.

12,282. (Judge Tindal Atkinson.) With reference to people suing *in formâ pauperis*. Is it your experience that they object to that form of procedure from a sense of pride?—No, I should not say that at all. It is simply a question of £ s. d.

12,283. It is not like the objection poor people have to going to the house?—No, I do not think so.

12,284. It is your experience that they would not object to proceeding *in formâ pauperis* if they could get it?—That is my view.

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[Continued.]

12,285. Perhaps your experience is the same as mine in that respect, as you have stated in your evidence, that the grave importance to them is not going far from their work?—Certainly, they seem to have a dread of it; and of course at exceptional times like this that feeling is rather emphasised, because there is a large amount of unemployment, and if they go away somebody else may step in.

12,286. What do you find is the average earned by workmen in your district?—It varies very much.

12,287. Twenty-five shillings to 30s.?—Well, from 25s. to more.

12,288. With reference to the stipendiary exercising jurisdiction; there is no doubt that they have a great knowledge of the people in their district?—Yes.

12,289. But what staff would the stipendiary have in order to carry out his order?—There are a number of things as to which there would be, or might be, some difficulty. Generally there are two or three clerks. Each stipendiary would have a clerk; a clerk to the justice I mean; and there would be perhaps one or two junior clerks.

12,290. But then there would also be the police?—Yes.

12,291. Could you have the services of the police for serving processes?—Yes, I think so, and I think it would be very valuable to have that, because they know where to find people.

12,292. (*Chairman.*) May I ask, do they serve summonses?—Yes.

12,293. Separation order summonses?—Yes.

12,294. They are served by the police?—Yes.

12,295. (*Judge Tindal Atkinson.*) One question with reference to parties coming together again after a separation order is made, is it not your experience that a great many are compelled to come together again owing to the want of means?—Yes.

12,296. And therefore if a separation order is made, by which a man is separated from his wife by reason of cruelty, the wife may be compelled to go back to live because she has not means?—Yes.

12,297. That must be a very miserable condition of things for the two of them?—Undoubtedly.

12,298. Especially for the woman?—Yes.

12,299. Therefore, under those circumstances, divorce would be preferable to a separation?—Yes; I have no doubt that happens again and again, that the woman is forced by poverty (a woman whose husband is not doing well, and so on) to come back to him.

12,300. Is it your experience that men in your district desert their wives and go abroad?—I know of instances, but I do not think many. I have heard of a great many in some of the seaport towns.

12,301. They may go away and never be heard of again?—Yes.

12,302. So that the wife does not know whether he is dead or alive?—Yes.

12,303. Or whether she can marry again or not?—Yes, but I do not know a case of that in my own district.

12,304. Would that tend to support your view that four years malicious desertion should be a ground for divorce?—I think that should be the very outside length of time.

12,305. Do you think there is a real necessity for giving facilities to the poor for getting divorces?—I do; and I go further. I say, in my opinion if some local tribunal is not empowered to grant divorces amongst the working classes things will remain very much as they are; the expense and the necessary absence from work will make it prohibitive.

12,306. Will that have a tendency to promote immorality?—Leaving things as they are?

12,307. Leaving things as they are?—Yes, I think so. I do not believe it will make any difference whatever to the practice that at present exists in the Divorce Court, because it would only be used by the very poor people (the facilities that are afforded by the local court), and you would not be able to get the services in that court of the counsel of the Divorce Court; so that nobody who was well off would dream of going into the local court, I think.

12,308. (*Sir Lewis Dibdin.*) Why do you think nobody would go there who had the chance of going anywhere else?—Because they would not be able to get the assistance of the very eminent counsel who have practised in that court almost exclusively.

12,309. You think that would be an inferior procedure to the ordinary man?—I do not like the word "inferior," but it would be for poor people.

12,310. But so much less than the ordinary one that no one would go to it that could afford to go to the other?—Exactly; I think if they could afford to go to the other they certainly would.

12,311. (*Lord Guthrie.*) Do you think it important, whether for poor or rich, that in questions so serious as divorce the judge should have the assistance at all events of solicitors if not of counsel?—Certainly.

12,312. And not be at the mercy of persons appearing by themselves?—Oh, I quite agree. One would very much rather have the services of counsel, of course.

12,313. But at any rate you would insist on having provision for the services of Agents?—Yes.

12,314. Would that involve some system in England, as we have, of Agents being provided by the court to act gratuitously?—I wish it might.

12,315. Do you see any difficulty in that being done by the young solicitors?—None; I think it would be an excellent thing.

12,316. We have had crime and lunacy mentioned as grounds of divorce. Whatever may be said about them, is it your view that if you add desertion to adultery it would substantially meet the hardships, and that the other cases would be few comparatively?—Yes, I think so.

12,317. Take crime and lunacy; desertion would be much in excess of these?—Yes.

12,318. So if a view were taken of what would be a reasonable compromise, do you think the addition of desertion without any other causes would substantially meet the situation?—Yes.

12,319. Is it your view that all round the sexes should be equal both with regard to divorce and separation?—Yes, I think so.

12,320. Of course one quite understands that you attach great importance to securing the permanence of the marriage relation?—Undoubtedly.

12,321. And have no sympathy with the views of those who are in favour of divorce by mutual consent?—No.

12,322. Then you said that if either of the parties demands, they should be entitled to a jury in matrimonial questions. Do not you think that the judge should have something to say in that matter?—Well, I was very much struck by a remark made by Mr. Priestley in giving evidence here, and I thought it so very sensible. The litigants would as a rule belong to the same class as the jury, and the judge does not; he is not quite in the same position, and I think that is a strong reason in favour of a jury, and it is the reason why a litigant accepts their verdict very often.

12,323. But I was thinking of cases that happen sometimes, when one party desires a jury and the other strenuously opposes it. Take the case of a sentimental divorce; would not a jury be demanded there because it would be more likely to decide in favour of the sentimental side?—I think so.

12,324. Then if the judge sees that, should not he have the power to say, "No, I shall not have a jury"?—Well, I should like to see it, but I do not see how one could do it. I think it would probably lead to more substantial justice, but I do not quite see how it can be done.

(*Chairman.*) Might I say, in the Probate and Divorce Court there is a discretion in probate cases and a right in divorce. I do not think the Probate Court are bound to make an order, but in the Divorce Court he is. It is a question of what the statute says.

12,325. (*Sir William Anson.*) I do not know whether I understood you rightly that you mean a separation order made on the grounds on which it can be now made by the magistrate, if the parties had not come together at the end of the time, you would give power to the stipendiary to make a decree nisi?—Yes.

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12,326. Without any fresh evidence?—Yes, without any fresh evidence. It would be impossible for those people, if they had been separated for a long time, whatever the limit might be, and probably both disliking each other, it would be so unlikely that there would be any happiness between them afterwards that I would allow a divorce.

12,327. But you would leave it to the discretion of the magistrate whether he would or not?—Yes.

12,328. Would not that lead to a great variety in the administration of the law. I mean so much would turn on the idiosyncracies of the magistrate?—Well, of course, that may be said more conspicuously in divorces than in other subjects, but in everything it may be said.

12,329. He would consider first what were the prospects of the parties getting on together?—Yes.

12,330. Well, that might vary?—Yes, undoubtedly; but my opinion was that there should be a hard and fast order for about six months. A great number of cases would be reconciled in those six months. Then if the magistrate saw, at the end of the six months, that there was any chance of a subsequent reconciliation, it might be adjourned for another six months or longer, but if there was no effort towards a reconciliation, and it seemed impossible, then if either party

desired a divorce at the end of a certain time, I would allow that divorce.

12,331. (Chairman.) Just two questions about the jury. You have no jury?—No.

12,332. Do you find you can satisfactorily dispose of all these applications without?—I hope so.

12,333. Why do you think, then, that a jury in other cases should be introduced?—Because for the reason Mr. Priestly gave; I thought it very sensible. It has always been the law in this country that anybody in the law courts could demand a jury, and in a matter so important as the relation of husband and wife, I do not see why you should not have it.

12,334. It does very much increase the expense of a trial?—I do not think it does in the county court.

12,335. One generally finds a trial by jury lasts three times as long as without?—In the High Court it does. I do not suppose there would be many cases where a jury would be asked for.

12,336. Well, you would leave it to the judge's discretion to say: "No, you shall not have one?"—Yes.

12,337. "It is a too simple matter?"—Yes.

12,338. Then as to lunacy. Do you know the number of lunatics to whom it might be possible to apply a statute?—No.

12,339. You have not gone into the figures?—No, I have no statistics with regard to lunatics.

His Honour JUDGE ARTHUR O'CONNOR, K.C., called and examined.

12,340. (Chairman.) Are you the county court judge on the Durham Circuit?—I am.

12,341. You were appointed in 1901?—Yes.

12,342. Before that you were practising at the Bar?—Yes, I was at the Bar. I was Queen's Counsel.

12,343. On that circuit?—No, I did not go on circuit.

12,344. Now you have sent us a short proof, and I think the best thing is to ask you to state shortly your views on the matters in it?—Well, looking at it from the point of view purely of a county court judge, I dissent from the particular character of the additional work proposed, but looking at it merely as additional work I think the majority of the county court judges would consider that this, like any other addition, emphasises the unfair position in which the judges are placed. The county courts two-thirds of a century ago were appointed small debt courts, and their work was very limited; the number of years' practice at the Bar necessary was seven only. Since then there have been about 60 or 70 different Acts of Parliament, each of which has added something or other to the work of the county courts, until now by consent any civil action can be brought. There are a number of cases remitted from the High Court by the volition of the High Court alone. There is bankruptcy jurisdiction similar to the High Court; there is Admiralty jurisdiction; company winding up; to say nothing about such things as the Employers' Liability Act and the Workmen's Compensation Act, which have very substantially increased (especially in certain districts) the work of the courts; and while the judicial importance of the county courts has been constantly enhanced, the difference in the relative social position which the judge's remuneration enables him to occupy as compared with two-thirds of a century ago is considerable. I know a large number of them feel it very acutely every year, and I think it ought to be mentioned, though few of them would care to mention it. So far with regard to the question of additional work of any kind. Then another aspect of the increase of work is this, that the courts will presently be submerged. I doubt very much if the courts can do any more work. We have very often to sit very long hours in order not to send poor people away who cannot afford to come a second time because of the loss of time and money, and I fancy that has been recognised already by a Committee of which I think your Lordship was chairman. I find in the Report on County Court Procedure that "It is not surprising to find that, with the increase in the ordinary work and the numerous duties cast upon the County Court Judges in many Courts, the amount

" of work to be done has reached a point at which the strength of the Courts as a whole is heavily taxed to cope with it"; and then further on, "Secondly, it must be observed that the vast mass of the work of the County Courts has been, and is, the enforcing of the payment of small debts and claims; that no more work should be placed on these Courts which would interfere with their primary and most important duty." Then again, "The County Courts, with the mass of small cases which are brought in them, must continue to dispose of the poor man's cases. This is their primary business, and the statistics above given show how as population increases the work of these Courts also increases, and may be expected to continue to increase. It is essential that that work should not be interfered with by attempts to deal to any serious extent with larger cases taking up much longer time in hearing, when the Courts which were originally constituted only as small debt courts have already had added to their primary duties a quantity of other work and have their time practically fully taken up." Then again the same Report goes on, "The conditions under which a local Judge must work in a Court with a district which is necessarily limited in order to deal with the aforesaid primary business of the Court, are not likely to make such a Court prove a satisfactory tribunal for the trial of cases of legal difficulty or of importance. In most cases he is out of touch with the other Judges and leaders of the legal profession, without opportunities of discussing legal cases with them, and will not have any, or hardly any, opportunity of hearing cases argued by eminent counsel, and, as a rule, has not an adequate library with books or works of authority at hand. Your Committee are informed that many of the Courts have not the conveniences for, and are quite unsuited to, trials of length and importance. It is also to be remembered that, even as matters are, a County Court Judge has to cope with a great variety of work which he individually must deal with, and that work is not divided up among County Court Judges as it is between the Judges of the High Court, to each division of which separate work is assigned so that Judges especially experienced therein may deal therewith." I do not think anybody who has not served an apprenticeship to it realises the isolation of a county court judge. I have been 10 years up in the north, and I have only seen one of the neighbouring judges in all that time. One never has an opportunity of consultation; and inasmuch as the work varies, and varies very quickly, and one never knows what kind of work may come before one, it is absolutely

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necessary for a county court judge to try at any rate to keep himself abreast with all the current decisions, with all branches of the law; and it is very hard work. At Westminster there are common law judges for common law cases, bankruptcy judges for bankruptcy, an Admiralty Court for the Admiralty, a chancery court for equity; but an unfortunate county court judge has all these things thrown at him pell-mell and must deal with them, and he would feel himself at a great disadvantage if he did not take care to be on a footing with counsel before him who have probably got up the law expressly for the case. Besides that, the time which a county court judge has to give for travelling is very great. I have no court that I have not to reach by railway. Sometimes it is only 12 miles a day; sometimes 20; sometimes 40—40 there and 40 back—80 miles a day; and sometimes the sittings are very long. I have sat myself as late as 11 o'clock at night in order to clear the slate. Having regard to the fact that every now and then you must make provision for substantial sittings, I can assure the Commission a county court judge's time is very full.

12,345. Can you tell us how many days your court sits?—No, I cannot say.

12,346. (*Judge Tindal Atkinson.*) What is the number of your circuit?—Number 2.

(*Judge Tindal Atkinson.*) Last year 128.

12,347. (*Chairman.*) What is done on the remaining days, leaving out the Sundays, the other 180?—Well, I have plenty of work, as I have indicated, in trying to keep myself abreast. My sittings are very long; I have never allowed any party to go away from the court without being heard, if he is willing to wait.

12,348. I quite follow that, but I am only asking for information. If it is 128, that leaves 230 other days, of which 50 are Sundays; that leaves about 180 days. What is done on those days?—Well, I generally have enough to occupy my time in reading reports.

12,349. Are you travelling on any of the 180; are you travelling on any days except the 128?—Oh no, only on the court days.

12,350. Well, I will leave Judge Tindal Atkinson to deal with that. Might I ask you to follow this. Assume, if you please that the county court is, for reasons you have given, in any district filled up, so that it would not be right that it should have added duties, a suggestion has been made that a certain number of county court judges should take this special work, and that that might involve an addition to their number for that purpose. Would that meet your objection? To put it in a concrete form: supposing a county court judge was appointed in addition to the number covering the North-Eastern Circuit, whose duty it was to take all this class of work that is now discussed, and to give special time to it?—If it was a special judge, then of course it would not add anything to my work or the work of the existing judges.

12,351. Then your objection is not because of the nature of the work but because it would add too much?—I think any addition to the work of an average county court judge would involve the risk of a breakdown.

12,352. Is there any other point you have to make as to a scheme of some character with regard to the jurisdiction?—Yes, with regard to the particular proposal I have a very important observation to make.

12,353. Which particular proposal?—With regard to the proposal about divorce jurisdiction.

12,354. Yes, in some local form?—But I do not recognise divorce; I do not believe there is such a thing. I am a Catholic and therefore I do not recognise that there is any authority in any human tribunal to dissolve a marriage once validly contracted.

12,355. Are you speaking of a marriage contracted before the Church?—Oh, no, any marriage validly contracted with the assent of both parties freely given—and consummation.

12,356. Well, I quite appreciate that point; but would you mind telling me how from that point of view you deal with cases of persons disappearing to another country and who are never heard of again. Would you in that case leave the one left behind tied for life?—I think when two people get married they marry for

richer or poorer; for better for worse, and for life, and they must put up with it.

12,357. I do not want to discuss it, but I only want information. Is not that on the assumption that the other side performs their duty to the best of their ability?—Well, I do not see that that has anything to do with the question of divorce from my point of view. It is very unfortunate for the innocent party, no doubt.

12,358. I am sure you would not mind my putting my difficulties?—Not in the least, my Lord.

12,359. We have had this class of case brought to our attention, cases where a person is left in this country and it is known that the person who has gone to the other country has started a new home, and has a new wife and children and everything else. Those cases are numerous?—Yes, unfortunately.

12,360. Your position would be precisely the same?—Precisely. There are all kinds of crimes committed all over the world, and that is one of them.

12,361. Now the next point you deal with is the separation order. You say you have no practical experience on which you found observations to be of use. Is that because they do not come before you?—No, I have nothing to do with separation orders.

12,362. With regard to the amendment of the law, if any; that would be, according to what you have just told us, a simple repeal of the existing law?—Yes, I regard the law, like the subject of it, as a cancer in the body politic, and I think the only thing to do is to cut it out and repeal the law.

12,363. May I ask your view as to the publication of reports, assuming the law continues?—Well, I cannot conceive the publication of such matters can do good; it can only do harm. You cannot prevent the papers circulating, and you cannot prevent them publishing that which they think will push the circulation of their productions; and whatever it may do with regard to the pure people who do not think any harm, or people who are too far gone to be injured, certainly with a large number of people it must do an immense amount of harm.

12,363A. You would be against the publication of them then?—Yes.

12,364. (*Sir William Anson.*) I take it you take the same view with regard to a marriage before a registrar (a purely civil contract) as in the case of a marriage contracted with the blessing of the Church; that is to say, that in either case the marriage would be indissoluble?—Certainly; the blessing of the Church does not make the marriage.

12,365. But you do not regard that as a contract in which each undertakes duties to the other and which is dissoluble if one party fails?—Absolutely indissoluble.

12,366. Then with regard to the county courts, apart from the question of over-burdening them; would you say, if this has to be dealt with, the stipendiary magistrate would be a more suitable person than the county court judge, on the ground that he is more in the habit of dealing with these poor people and more conversant with their lives?—My mind cannot entertain the idea of anybody being a suitable person.

12,367. So it is not a question of the suitability of the judge or the cost to the suitor. I mean the proceedings with a jury before a county court judge would be more expensive, would they not?—I am afraid I am not able to give an answer that would be satisfactory to either myself or you.

12,368. You cannot entertain questions of either the proper jurisdiction or the best procedure?—I am afraid not.

12,369. (*Lady Frances Balfour.*) There is one question I should like to ask you. From your own point of view how do you justify making any order of separation between married people?—I think a person has the right to be protected in life, limb, peace of mind; and I think either spouse ought not to be subjected to a life of misery.

12,370. Of course separation does dissolve the marriage conditions?—Oh, no; I do not think separation dissolves marriage at all.

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[Continued.]

12,371. But the conditions of marriage cannot be fulfilled if a separation order is made?—No, neither could they in the case of lunacy or of long imprisonment.

12,372. I only mean it seems practically the same thing as divorce to separate them for life?—I do not see why a separation order should separate people for life.

12,373. Well, it very often does, does it not?—Yes.

12,374. It contemplates that?—Yes, very likely.

12,375. (Lord Guthrie.) Is it your view that separation should be permanent or should be temporary, when enacted by a tribunal?—Well, I have not had any experience with regard to separation orders, but I should say that when one is given, it should be given with the greatest possible care, and for a limited time.

12,376. Only on the ground of adultery, or on any other ground that made the continuance of reasonable relations impossible?—Anything that endangers life or limb or peace of mind.

12,377. (Judge Tindal Atkinson.) Do you consider that it is within the range of practical politics, to get the Act of 1857 repealed?—That reminds me of a passage of a judgment very recently given by a Lord Justice of Appeal: "The wisdom of one Parliament may seem folly to the next and the declaration of the former may be set aside by the latter, and yet the law of God remains unchanged and unchangeable. No one acquainted with the history of Tudor times can doubt that if it had suited the King's purpose to declare that marriage with a deceased wife's sister was not contrary to the law of God his parliament would so have declared it." They declared just the opposite.

12,378. Do you consider it would be possible at this time of day to get any Government to bring in a bill to repeal the Act of 1857?—I should not be very hopeful of the success of the effort, but that is no reason why the effort should not be made.

12,379. Supposing the effort failed, then the State has recognised the right to divorce, and has recognised the right of divorce being extended to all classes of the community. That is so, is it not?—Yes, that is so.

12,380. The State has recognised (I do not say the Church) that divorce should be open to all classes of the community?—Yes, but if an Act of Parliament were passed conferring on me jurisdiction and authority to declare a marriage dissolved I should have to regard it as I should an Act that purported to repeal the Ten Commandments.

12,381. Assuming that is the condition of the State law, then ought not all classes to have the advantage of obtaining the benefits that that law confers?—That is assuming they are benefits.

12,382. Yes?—I think they are most disastrous arrangements, and whatever personal relief individuals may enjoy the injury to the community is immense. The disadvantages, I think, generally are much greater than any possible benefit.

12,383. Having regard to your view, you do not recognise the right of all classes of a community to get the benefit of the Act of 1857?—No, I do not recognise the right of anybody to get a divorce, or of any Parliament to enable any tribunal to decree a divorce.

12,384. One word with reference to the congestion of the courts. Is it your experience that you may go to a town very often and find extremely little to do? You may sit in one town only an hour or an hour and

a half, or not so long, and the next day seven or eight hours. Is that your experience?—I seldom have only one hour.

12,385. You have a town called Consett?—Yes.

12,386. Is that a heavy court?—I have sat there until past 10. There are the ironworks there and there is considerable population.

12,387. At Consett in 1909, according to the last report, there were not many?—No, but there are a number of pits there.

12,388. It is not a large court?—No, it is one of the smallest.

12,389. Then I suppose it would be possible, as far as the judge of your district is concerned, to give a certain number of extra days in the year to divorce cases?—The judge who might be there could; I could not. If such an Act of Parliament as is suggested were passed it would take some time to pass it, I suppose, and by that time I might be considerably more fit for the retired list than anything else; but if I were not I am afraid there would be a vacancy on the county court bench.

12,390. I suppose you have no means of knowing what the general opinion of county courts is on this point?—I am perfectly certain that the majority of them would fret at the addition of any further work, and a great many of them would regard this particular jurisdiction with anything but favour.

12,391. Have you taken any steps to ascertain their opinion—the individual judges?—No, I have not.

12,392. And you are only now stating what you believe to be the fact and not from actual knowledge?—Well, yes, that is so. I can conceive an odd judge here and there on the bench having a strong view with regard to this matter and pushing it so far as he could, but I do not think he would represent the opinion of the great majority.

12,393. It would not represent the opinion of the 55 judges?—Oh, no, nothing like it—nor half.

12,394. (Chairman.) I should like to ask one thing. We have one of the distinguished authorities of your Church coming to give evidence, but I should like to know as a matter of information what is the foundation of your view of the indissolubility of marriage?—The foundation of my view is that marriage was instituted from the beginning to be indissoluble; it was established before man fell.

12,395. Whence do you derive that view?—Well, I do not know. It is like asking me, if I may say so, where I learned my ABC.

12,396. I really asked with the deepest possible interest, because we shall have the views of certain ecclesiastics who are going to give evidence, I understand, and it is a very important matter for us to know as to whence the idea is really derived?—I should prefer to leave any theological point to a theologian, because I am not a theologian, but I do not think you could find all over the world any Catholic—or anybody more than a nominal Catholic—who recognises any such power in the world.

12,397. It would be of interest to know on what that view rests?—On the primal institution of matrimony in the Garden of Eden.

12,398. However, you would prefer that questions of that character should be addressed to those who are more qualified to deal with it from a theological point of view?—Any theological question I think had better be addressed to a theologian.

Mr. HAROLD MONTAGUE LLOYD called and examined.

12,399. (Chairman.) You are a solicitor practising in Cardiff?—Yes, my Lord.

12,400. I have a letter here from your firm at Cardiff, which is the foundation of your coming here?—Yes.

12,401. Intimating that the advocates—that is the solicitors, I suppose—practising in the police courts of Cardiff and the district should be represented before our Commission, and that is how you come to be here?—Yes, my Lord; many of them felt that our point of view should be put before the Commission.

12,402. You yourself have been practising since the year 1900 in the different police courts of South Wales, particularly Glamorganshire?—Yes.

12,403. And I see you have had 2,478 cases under the Act of 1895?—Yes, that was up to the time I sent my proof. I have had practically six a week.

12,404. And you have prepared 500 separation agreements, too?—About that amount, yes.

12,405. Will you give us the view which you represent as to jurisdiction to be given to local courts?

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Well, my personal view is that there is only really one class of persons who suffer from the fact that they have not local facilities, and that is the very poorest persons. I have had some experience in divorce cases, particularly in undefended cases, and I have found that the middle class and the lower middle class and the artisan class have not had much difficulty in providing the funds to press their suits in the Divorce Court in London.

12,406. What amount of funds have they had to find?—In an ordinary undefended case they have had to find something between 45*l.* and 60*l.*

12,407. Have you found they can do that?—I have found, in cases where the husband or wife really wanted a divorce, and on grounds that were adequate, there has been no difficulty really in finding it.

12,408. Have they done it by saving?—I think they have been helped by relatives probably, and I have known cases where an employer has helped a workman; and I have known cases, I think I can safely say, where workmen have helped each other. I have found, time after time, the very poorest people—probably the casual labourer and dockside labourer, and perhaps the coal miner, whose wages have been 23*s.* to 25*s.* a week—have been quite unable to get the money.

12,409. Then it really depends on the line you can draw?—Yes.

12,410. If the jurisdiction should be given to local courts, have you formed a view as to what court it should be?—I believe the ideal court should be something between the stipendiary court and the county court, for this reason. I quite agree with the last witness, that as far as Glamorganshire, for instance, is concerned, the work is congested. Circuit No. 24 has an immense number of cases to try; that includes Newport and Tredegar, where there are large iron-works; it is Judge Hill Kelly, who has recently been appointed. Then the county court judge for the Rhondda division I know is very much overworked, and I can safely say that is so with regard to the three stipendiary magistrates of Glamorganshire, particularly the stipendiary at Cardiff, who is of three years' standing. He is very much overworked, and I think an ideal court would be something between the two; either a county court judge or a gentleman corresponding to the position of a stipendiary magistrate.

12,411. It has been suggested that a county court judge should be relegated to do that work?—Yes, I think that would meet the case.

12,412. If that were done would you suggest that the hearing should be all at one centre, or say one or two centres, or at every county court?—I think probably every county court would be the fitting way of getting over the difficulty, and I should give that particular judge the whole of the jurisdiction. I should give him jurisdiction with regard to separations under the 1895 Act, as well as divorce. The result would be you would have the whole of that class of work before one man.

12,413. Would that be feasible with regard to the whole district you are speaking for?—I think it would be feasible with regard to Glamorganshire. I think one judge could do the whole of the matrimonial work for Glamorganshire.

12,414. Including the separation orders?—Including the separation orders.

12,415. You have also in your proof suggested that, assuming the jurisdiction were given, some provisions and safeguards should be introduced, which you mention?—Is that under the 1895 Act with regard to separation orders?

12,416. I am only looking at your proof. I take it it means divorce jurisdiction?—Well, my Lord, with regard to the divorce jurisdiction, I think at the time the petition or citation was applied for, the applicant, in exactly the same way as they apply for summonses under the 1895 Act now, should apply on oath to the magistrate or judge, and upon oath state that his income was not more than a certain amount, possibly 2*l.* a week; and I think in all cases there should be an appeal as of right, both upon questions of law and fact, to the judges of the High Court.

12,417. You find, I think, though magistrates have to try issues of cruelty, desertion, neglect, and sometimes adultery, that there have been very few appeals?—Very few indeed, my Lord. I think it has worked most satisfactorily in every detail. I think if you are going to give them the extra jurisdiction, perhaps they would not have time to go into such serious matters as will be required.

12,418. How often do your courts sit—stipendiary and county courts?—The stipendiary courts and the magistrates' courts sit every day, and the county court sits four days every month.

12,419. Now with regard to the Act of 1895, what is the comment you have to make on that?—Well, my Lord, I think that Act of Parliament has been a great boon to the women of the lower classes, and I think also the Licensing Act of 1902, which gives the husband the opportunity of getting a separation upon the ground of his wife being an habitual drunkard, has also been a great boon, and I think the Act has worked in an excellent manner in South Wales. I think, if I might say so, that that Act, instead of being limited, wants extending, and I should like to say how. With regard to the question whether the Act is conducive to adultery, I should say in some cases it no doubt is; I do not think that can be denied, but I think in a great many cases as far as the husband is concerned, that before the wife is driven to the magistrate, and before she gets a separation, if one takes the care to enquire, one would find probably in a considerable number of cases that the husband has at that time formed an adulterous intercourse probably before he treats his wife cruelly. He very often picks up with another woman, and then goes home and treats his wife unkindly; and, therefore, it cannot be said that that Act has caused the husband to commit adultery.

12,420. That case would be a case for divorce if it could be applied?—Yes, my Lord. Then with regard to the wife, it is very difficult to get figures, but there are comparatively few cases in the South Wales courts in comparison with the orders made where an order is discharged on the ground of the wife's adultery.

12,421. Can you say how many of those cases you have had?—Between 90 and 100.

12,422. Discharged on the grounds of the wife's adultery?—Yes, and I do not know how many orders are made every day; probably 250 and 300 a year, and probably a dozen are discharged on the ground of the wife's adultery. It seems the husband knows his position. He knows if he can get evidence against his wife the order will be discharged; and the wife knows that the 7*s.* or 10*s.* will go, and that is a very great consideration to her, and very often has the effect of keeping her straight. I should say this, my Lord, that I believe with regard to the great number of people who come before the magistrates, in Glamorganshire at any rate, and Cardiff particularly, there is often a row in the house, and a summons is applied for; the wife rushes off and gets a summons, and the magistrate makes it returnable in two or three weeks, and very often when that is done there is no appearance when it comes on. They have had time to consider and settle their differences, and the whole thing ends happily. Therefore I should suggest that there should be a certain time always between the time of the issue of the process and the return day.

12,423. Would you give us your view as to the desirability of limiting separation orders for a period to begin with?—That is extremely difficult, for this reason. My experience is that at least 70 per cent. or 80 per cent. of the husbands and wives who are separated by an order of the magistrates return to one another.

12,424. That in itself would show, would it not, that the permanent order is not a necessary thing?—That is so, my Lord, but then there is a difficulty on the other hand. You may get a husband who is persistently cruel to his wife, and has deserted her, and the wife gets the order against him; then at the end of six months, or whatever is the period, what is the position if the wife says: No, I have had enough of him. Now the blame probably was not hers that there was a separation, and I think the tribunal should

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have discretion at the end of the time as to whether they should extend it or not. I think that is an excellent way out of the difficulty, provided there is discretion in the tribunal.

12,425. Would you agree that it might then be turned into a divorce order if the cause of the separation order was such as to justify it?—Well, my Lord, that is a matter I should be inclined to leave entirely to the discretion of the magistrate or judge. I think a very important thing is this, that if the jurisdiction of the magistrate under the 1895 Act is taken away there is one thing that ought to be left to them. Your Lordship knows that under the 1895 Act when the husband has been guilty of an aggravated assault on his wife, as a matter of course the magistrate can there and then give an order; and the same thing if the husband is found guilty on indictment of an assault on his wife. Now if it is suggested, and if it becomes necessary, that the whole of the proceedings under the 1895 Act should be taken away from the magistrates and given to a special tribunal, it is necessary that that particular power should be still left in the hands of the magistrates. I think it is very necessary. If a woman is violently assaulted the magistrates should be entitled to give a separation at once. I think that power should be left with the magistrates whatever happens.

12,426. You said your view was that the Act requires extending and not limiting. Would you include in that the correlative right in the husband to obtain an order against the wife?—I should on this ground. The man may or may not be a Catholic who objects to divorce and he is not in a position to go to the High Court and get a judicial separation. He finds his wife has been guilty of an act of immorality—I have had scores of these cases—and the only thing he can do is to turn her out. He has not the means to get a judicial separation in the High Court, and he may have a conscientious objection to divorce, and he has to turn her out, and he does so. Twelve or eighteen months go by, and then the wife goes to a police court, and issues a summons for desertion. The position of the husband may be that at the time he turned her out he could not do anything, and then when she takes out the summons he alleges adultery, and the probabilities are that the witnesses are dispersed—in a seaport town—and the man has to pay. I should suggest that the husband should have the opportunity, if he so desires, of getting a separation on the ground of his wife's adultery.

12,427. If there was a local court established which had divorce jurisdiction, you would not require that?—No, that would meet the case.

12,428. According to your view, either that should be done, or the magistrates should have power to deal with adultery cases too on both sides?—Yes, my Lord. Then, my Lord, there is another position I should like to take up with regard to the magistrate's court, if jurisdiction is still left with them as I understand it at present—and I practice at any rate in South Wales, and I assume it is the universal practice throughout the county—that where proceedings come before the stipendiary magistrate, either the husband sets up a defence of adultery, or the husband asks for the order to be discharged on the wife's adultery. In connection with that a man is mentioned, who is in the position of a co-respondent, and he has no *locus standi* before the magistrate; he is not represented by counsel or solicitor, and very often a grave injustice is done, and the man has his character taken away without any opportunity of defending himself.

12,429. You have told us that in a good percentage of these cases they do come together again?—Yes, my Lord. Then I should like to say another word with regard to the extension of jurisdiction. If the 1895 Act is still to be left with the magistrates, I should suggest that upon proof of the husband's adultery the wife should have the option of obtaining a separation.

12,430. Yes, I asked you that, and I understood you to say it should be on both sides?—Yes, my Lord.

12,431. Then on some minor points; you say the order should be enforced directly the payments become due, and it should not be necessary to wait a month?

—Yes, I think that is a very great hardship on a number of poor people.

12,432. What is the point you make at the bottom of the next page of your proof? “Upon a summons to discharge an order upon ground of adultery, if it be proved that the husband is also guilty of adultery the magistrates should have option as to whether the order should be quashed”?—I feel somewhat strongly on that. In my experience it has happened over and over again that the husband, at the time his wife applied for an order against him on one of the grounds in the 1895 Act, is probably living with a woman, or having promiscuous intercourse with a number of women. The wife gets an order of separation against him. Time goes on, and the man probably does not discharge his obligation under the order, and gives his wife no end of trouble, and keeps her short of money. Then on one occasion perhaps she takes too much to drink, or in some way makes one slip and commits adultery. Immediately that is done the husband takes out a summons and discharges the order. Now the magistrate has no option at present at all, and I say the magistrates should have the discretion of saying whether under those circumstances the order should be permanently discharged or not.

12,433. That is based on the idea that it is really the husband's fault, and therefore he should still be obliged to keep her?—Yes, and I am sure the tribunal whom it came before would take care—

12,434. You are not in favour of transferring the separation orders to the county courts unless there is one judge constituted to deal with it all?—That is my point, my Lord.

12,435. Now with regard to amendments of the present existing law. Has your experience led you to any conclusions about that?—Well, my Lord, I am strongly of opinion that a wife who has been deserted for a number of years should be entitled to the right to a divorce.

12,436. And having regard to the class of people we are talking about, what limit of time do you suggest?—Well, my Lord, I certainly would not make it too short, and I would not make it too easy, for one knows these people rush about from one place to another, and to their fathers and mothers, and I do not think any injustice would be done if one said five years.

12,437. It is much the principle of the Scotch law?—Yes, and I think there should not be too much chance of collusion, and that it should not be too hurried.

12,438. Do you mean that that desertion alone should be a ground?—Yes, I do, my Lord.

12,439. Have you any other points as to the grounds of divorce?—I think, my Lord, that lunacy in the case of a husband being confined for any length of period should be a ground; and if a man is convicted—certainly for any offence of immorality for any length of period, providing the wife is not convicted with him for the same offence.

12,440. Is that a mere matter of opinion, or is it founded on your experience?—It is on my experience, I have had a great many matrimonial matters to deal with, and I have known of cases where the wife has had to live her life under the shame of the husband being in penal servitude.

12,441. Have you ever heard those people say that they should be entitled to get relief?—Yes, I have been asked time after time: What can I do; cannot I get a divorce?

12,442. Of what class of people?—Chiefly, I should think, seafaring people, wives of firemen and sailors generally, also of the dock labourer.

12,443. It is not a matter of opinion?—No, I think there could be voluminous evidence brought forward on that. Time after time one is asked: Cannot I do this that or the other, or get married again; I want to get away from him.

12,444. Have you had any facts placed before you in connection with confinement in an asylum of a similar character or not?—Within my own experience I have only had four cases which I can speak about personally. I know of one case where a woman was married at the early age of 22, and the husband

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contracted venereal disease, and the result was he was confined, and has been confined in an asylum for eight or nine years, and there is no possibility of that man ever being sent home again. The result is that that young woman, through no fault of her own, is bound to this man, and it places her in a position of great hardship.

12,445. Is that a case you were consulted in?—Yes, and I had to advise that nothing could be done. Then another case was a case in which a man time after time was taken to an asylum. He was home for periods of 12 or 18 months, or two years, and just towards the end of that period periodically he had an attack of frenzy, assaulted his wife, beat her, and on one occasion attempted, I believe, to murder one of the children; and that man is in and out of an asylum, he is there at present, and the wife in that case is anxious to get a divorce, but she cannot.

12,446. Were any of those children originated at a time when he was out of the asylum but had been in it?—I think there are five children, and two or three of them were born after he had been released from the asylum on two occasions. I think he had been there twice before the first of those was born. Then the other case was the wife of a chief engineer of a steamship. He met with an accident, and he was confined in an asylum, and is still there, and I am told he will never be released. He has been there seven and a half or eight years, and the wife in that case is anxious to obtain relief if she can. And the fourth case was a case of a wife of a publican, a man who drank to excess. In his particular case he had been taken away to an asylum. He was not in any way a good husband as far as the wife says. In that case there was a large family of children, and the wife was desirous of dissolving the marriage. Those are the only four cases I have known of personally. I have heard of others, but those cases I have been personally consulted in to see if they could get relief.

12,447. The last point, I think, is the question about audience. Perhaps you will tell us what you think about that?—To some extent this is a personal matter.

12,448. Perhaps you will say professional?—Professional if I may say so. At present, all over the country, solicitors have been practising in the police courts under the 1895 Act, and I think they have performed their duty successfully and well. In many cases counsel go in too. In the county courts solicitors practise throughout the country. Of course counsel could still be optional, and I think that if a court which deals exclusively with these matters is formed probably a great many people will take counsel in, but I think, as far as possible, they should be put in the way of getting assistance as cheaply as possible. There is no question at all about it that you can obtain the services of very efficient solicitors a good deal cheaper than you can obtain the services of reliable counsel.

12,449. Might not that be met by the suggestion made from Scotland as to the assigning of counsel and solicitors?—Yes, I think that is a very excellent idea.

12,450. There is a matter not in your proof, and that is the question of publication of reports. As you come from an important district, and are rather representative in your evidence, I should like to know what you say about that?—There was a great diversity of opinion about this matter. Everybody has his own fad and opinion, but my opinion with regard to the matter is this: I cannot see that it serves any useful purpose to have them reported, but certainly with regard to cases under the 1895 Act—cases where husbands and wives go before the magistrates—my own opinion is that the details or the facts of those cases should not be published. It is entirely a private matter between husband and wife. Perhaps there is some family feud; they go before the magistrate, and the details are published, and it puts a handle in the hands of neighbours who are not perhaps animated by good feelings towards these people, and it is a hardship on the children.

12,451. Are those cases in your district extensively reported?—They are if there is any suggestion of immorality or anything that is good "copy." In

certain papers one gets columns. In other cases, if it is only an ordinary case of separation you may see nothing, or perhaps a couple of lines.

12,452. Your view is that it is not to the benefit of the parties at all?—Yes, I cannot see that any useful public purpose is served, and I certainly think it is very much to the detriment of the children and to the husband and wife. I see no necessity where the private matters of people—

12,453. If that view is correct no matrimonial cases should be reported?—Well, my Lord, I should even go that far.

12,454. You mean, turning upon merely the relations of husband and wife?—Quite so.

12,455. (*Mr. Brierley.*) In Glamorganshire is it the practice to grant a separation order in a case of desertion?—Yes, it is.

12,456. Now you say, assuming a matrimonial judge were appointed for Glamorganshire you would maintain the jurisdiction of magistrates for aggravated assault. What do you say about cases of maintenance for desertion?—I think I should be inclined with regard to cases of maintenance for desertion to leave that with the gentleman appointed.

12,457. Are not those cases where time is really of great importance as a rule?—Yes, I think that is so.

12,458. Would it not rather lead to hardship if the parties had to wait for the coming round of the matrimonial judge as you suggest?—I am afraid it would in a number of cases, but on the other hand I think very often the wait means that the parties make it up.

12,459. Sometimes no doubt that happens, but in other cases is it not the result that the wife has to apply to the guardians?—That is so, and the wife now in a large number of cases after the order is made has to apply to the guardians.

12,460. No doubt she has, but in some cases that is not so?—Quite.

12,461. I do not know whether in your district applying to the guardians means having to go into the workhouse?—I think that is rather an optional matter.

12,462. But it differs in different unions?—Yes.

12,463. I did not know what the practice was there?—I think there, in some cases, she would have to go into the house. It would be in the discretion, to some extent, of the relieving officer or the guardians.

12,464. In the absence of this matrimonial judge that you suggest, do I understand you would not grant any divorce jurisdiction to the existing county court judge in Glamorganshire?—Well, with regard to that, I should say it would be better to grant jurisdiction to the stipendiary magistrate if you were going to do that. The stipendiary magistrate at present deals—

12,465. That would only apply to a very few counties, but you are dealing with Glamorganshire, no doubt?—Then I should give it to the county court judge.

12,466. (*Judge Tindal Atkinson.*) I see Circuit No. 24 is your circuit?—I think it is.

12,467. The judge last year, including his deputies, sat 133 days. That indicates that he has some days to spare, does it not?—Well, sir, I have no doubt that that is the case; but, on the other hand, there are a good many things to do in his spare time. I know there are cases to be considered in which there are reserved judgments in a great many important matters. I know litigants have to wait time after time to have their cases tried.

12,468. Would you anticipate that he would have a great number of divorce cases?—I would. I think he would have a very good number.

12,469. Then you think that indicates the necessity for some facilities?—Yes, I think it does.

12,470. And your opinion of the necessities for those facilities is formed from your own practical experience?—Yes.

12,471. And from people coming to you to get relief?—Yes.

12,472. And who cannot get relief because they have not the means?—Yes, I might say in a great many of these separation cases under the 1895 Act, if

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there were local jurisdiction probably the wife would have gone in for a divorce instead.

12,473. Do you agree that, supposing the parties could sue *in forma pauperis* that the very great difficulty they have at present is the expense of taking these witnesses to the court?—That is a great difficulty.

12,474. And also is it your experience, as other witnesses have stated, that they cannot afford to lose their day's work?—I have never heard that put forward before, personally speaking, but I have no doubt in a great many cases it is the case.

12,475. That men, not particularly skilled workmen, who are kept two or three days from their employment lose their work altogether?—I have no doubt that is the case, but I have never had it personally brought to my knowledge.

12,476. (Sir Lewis Dibdin.) I am not sure if I quite understood your suggestion; it is that the whole of the matrimonial jurisdiction both for separation orders and divorce should be dealt with by a separate judge and a separate court?—That is my idea.

12,477. That would be your suggestion, not only for your own locality, but for the whole country?—Well, of course, I am speaking more with regard to my own locality, but generally with regard to the whole country from what I have read and heard.

12,478. It would be impossible to make one arrangement for South Wales and different arrangements for other parts?—I agree.

12,479. So it would involve a separate set of judges?—Yes. One hears and reads from other parts of the country that the work of the stipendiary magistrates and the county court judges is very heavy, and I think it would be important to have the matter properly inquired into, and that it should not be rushed.

12,480. And that the judge should be as adequate a person as possible to do the work?—Yes.

12,481. Supposing it was found possible to send down a High Court judge from the Probate Court in London; I suppose if it were possible that would be a satisfactory arrangement?—It would be very satisfactory, but you would want a lot of them.

12,482. You anticipate a great multiplication of applications for divorce?—Well, there would be a very much larger number than there are now, but I think you would find there would not be so many separation orders. There would be more divorces and less separation orders.

12,483. Do you think that great increase would go on permanently, or is it your view that now there are a great many cases that are kept back by the lack of courts and by the expensive procedure, and that therefore there would be a great rush of cases at first, but that that would settle down afterwards to a much smaller average?—No, I do not think there would be a great rush of cases. I think you would find the average about the same, but at the start I think you would be surprised at the number of divorces applied for. I think year by year the law of average would work out.

12,484. But there would be a great increase of divorce cases?—There would certainly be more divorce cases, but I am not at all sure if you took it through and through that there would be, if you put against the divorce cases the number of separation orders, a great increase; there would be a very great many more divorces than there are now.

12,485. But I am throwing out the separation orders. Actually divorce cases there would be more of?—Yes, undoubtedly.

12,486. And that would be a permanent and large increase in the number of divorce cases?—Yes, I think it would.

12,487. (Lord Guthrie.) Do you think it would always be necessary in order to do justice to preserve separation orders whatever is done with regard to divorce?—Yes, my Lord, I think it would.

12,488. Apart from Catholics altogether?—Yes, I think so.

12,489. Are there many cases where that is really the proper course to take, and not divorce?—Yes, I

think so. If I might point this out, I know of many cases where the husband has treated the wife badly—been guilty of adultery—and the wife for some reason has said, "No, I would not divorce him if I could." "I will make him still support me and the children." I think there are a large number of people who take that attitude.

12,490. In your view should the grounds for separation in the High Court and in the summary court be the same?—I think so.

12,491. You would in that case give the High Court power in the case of habitual drunkenness, and the summary court in the case of adultery?—Yes, I think so.

12,492. Have you any experience with regard to the number of separation orders that are not, in fact, taken up?—I do not quite follow what you mean by not taken up.

12,493. We have had evidence about separation orders being granted and then never actually taken up or enforced, but they are simply left?—Oh, I should say in applications for separation—summonses issued by a wife against the husband on one of the grounds—I should think that 50 per cent. of them are settled before the case comes on, and they go back.

12,494. But have you cases where a magistrate grants an order but apparently nothing follows?—Yes, I have found cases where a magistrate grants the order to-day, and the next week you hear they have gone back.

12,495. Is that, in some cases, due to the fact that she could not get any payment, and had to go back perforce through starvation?—Yes, there would be some cases, but I should think in a proportion—one cannot say what proportion—that is not so. I have seen a woman in such a state that you could not tell she was a woman except that she had a skirt on, and she goes to the magistrates and the husband is talked to severely, and you see them going down the street arm-in-arm after. You cannot tell what operates on the mind of a woman.

12,496. Are there cases where a separation order is made, and only a maintenance order is needed?—Yes, I think with the lay magistrates that is very often done, but with the stipendiaries they are more careful. With the lay magistrates that is done without the consideration, sometimes, that the matter deserves.

12,497. With regard to crime and lunacy, in the cases you have mentioned where the wives desired to get a divorce, had the husbands, in addition to being a lunatic or criminal, treated them badly?—In the four cases I have mentioned only in one case I think.

12,498. In the other cases what was the wife's apparent motive? Was it for fear of the man coming out of the asylum or gaol, or in the children's interests?—No, I think in one case I mentioned where the man as a result of his early folly entered an asylum for a number of years, the wife, who was a respectable woman with two children, found it very hard to struggle against the world and keep herself and the children respectable, and probably somebody else came along, and she formed an attachment, but she would not go away and commit adultery, but she would desire to get a divorce.

12,499. In her own interests and the interests of the children?—Yes.

12,500. (Sir William Anson.) I understand you say in many cases the parties are able to find money enough to take the case to London, and the change would only be necessary in the case of the poorer classes?—Yes.

12,501. Are those very numerous?—The poorer classes?

12,502. The case in which this jurisdiction would be required to assist the poorer classes?—I should say fairly numerous.

12,503. What are the sort of people who have found this 50*l.* or 60*l.* to go to London?—I should say an engine driver or a skilled artisan earning 45*s.* or 2*l.* 10*s.* or 3*l.* a week; or a coal trimmer. He does not find much difficulty. It is the man earning 18*s.* or 25*s.* a week.

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[Continued.]

12,504. And they cannot find the time?—Or the money; it is impossible.

12,505. Then as to jurisdiction, the county court has been suggested and the stipendiary magistrate, with the extension of jurisdiction. You would have a combination of the two in a separate judge?—Yes, I should like to see the stipendiary magistrate with the jurisdiction of the county court judge; but neither of them has sufficient time. I take Cardiff as an illustration. The stipendiary magistrate sits every day in the week, perhaps. He is there from half-past 10 to 11, and is invariably there till 5 or 6 at night. He tries indictments, offences, assaults of all descriptions, and presides over the Marine court as to the loss of vessels, and, if you add to his duties, you must get another stipendiary magistrate, and I think the way out of the difficulty would be to have a special judge.

12,506. With a more extensive circuit than the county court?—I think so. I have no doubt the judge has any amount to do with his time, but I know with regard to two circuits—Circuit No. 24 and the Rhondda Circuit—during the days they sit they have very long hours, but the list is not got through, and parties have to wait month after month. But if you take away those cases under the 1895 Act from the magistrates, and then there is this further work the judges would never get through.

12,507. Then we are told there is an advantage in the judge being on the spot, knowing the ways of the people, and so on?—Yes.

12,508. Would the judge you suggest be sufficiently acquainted with the people in that way?—I think he would soon know the ins and outs of things. The stipendiary acts as a father to the poorest classes, and if they had their option he is the man they would go to first, as they go to him for everything.

12,509. And you would give him the jurisdiction of the Divorce Court in London, and of the Act of 1895?—Yes, if he had time.

12,510. Then it is suggested that the stipendiary magistrate might grant separations orders, and if after a limited time the parties were not reconciled, and one came and asked for a decree for divorce, that he should have power to grant that. You would say without any further evidence the judge should have that power when the original case presented was one of separation?—I think his power then should be discretionary.

12,511. Would not that lead to lack of uniformity of decision, which in a case like the operation of the marriage law would be rather disastrous. I mean the views of one judge might in a matter of that sort differ very much from those of another?—Well, the views of one judge differ very much from the views of another on everything. One finds that with regard to criminal cases particularly.

12,512. But that is not so at present in regard to divorce. You secure that uniformity?—Yes, and you have the advantage of the two judges working together; but if you take the views of the stipendiary magistrates and the lay magistrates with regard to the 1895 Act you would find great difference of opinion. In some courts you have to say very little, and in another you have to make a colossal case to get a separation.

12,513. But in the case of dissolution of marriage it is important that the decisions should be uniform throughout the country?—Yes.

12,514. And you would rather leave as little as possible to the discretion of the magistrates?—Yes. One other word with regard to juries. Personally speaking I think it is impracticable to have juries. I think it would be very much better, and the working classes would rather leave it to the man who is trying those cases constantly. They have the greatest confidence in the stipendiary magistrate. I think if you give everybody the right to appeal to the High Court on questions of fact and law there would not be any necessity to trouble people with a jury.

12,515. But the jury would not help you in the cases you mention of asking the court to turn a separation order into a divorce without taking further evidence?—No, that is so. Personally, I think it is a very difficult matter, and it is very hard to form an

opinion on that point. It may be better to have the whole thing tried again.

12,516. The question of lunacy presents very great difficulties?—Yes.

12,517. This man who had attacks of frenzy was able to return home and cohabit with his wife, and children were born?—Yes.

12,518. At what point would you say the attacks were so serious or so habitual that you would make it a ground for divorce?—I should say then, that if the husband was permanently confined, and there was no possible chance of his return to the wife, the wife is entitled to a decree nisi.

12,519. But how do you distinguish that from a person suffering from permanently disabled conditions in the house?—I should say then, that if the husband was permanently confined, and there was no possible chance of his return to the wife, the wife is entitled to a decree nisi.

12,520. But if the husband is a permanent helpless paralytic in the house?—That is a case of great difficulty again.

12,521. (*Judge Tindal, Atkinson.*) May I ask one question? Assume the judge of No. 24 Circuit on the average only sits 12 days in the month, does it not strike you he would have ample time to try the divorce cases that would arise?—I have to appear before the judge on Circuit No. 24, and I should not like to say if I think he has or not. Of course if a judge has nothing else to do—

12,522. I am taking the Returns for 1909, when the judge was sitting on an average 12 days a month, extending over the whole of that year?—Well, if the judge of Circuit No. 24, or of any other circuit, has 12 days off each month, there is no reason why he should not make use of it in some way. He has a good deal to do of course in the other 12 days. If he has 12 days to spare—

12,523. No, he sits 12 days in the month, and has the rest of the month to spare. Do not you think he could try a few divorce cases?—I think he could under those circumstances.

12,524. Well, those are the circumstances?—I qualify it in this way, that I do not know what he is doing with regard to the other time. It may be he has to consider matters and spend a long time looking into matters.

12,525. (*Sir William Anson.*) If he has to deal with the separation orders as well, would not that lead to his time being fully occupied?—I think it would.

12,526. (*Chairman.*) I want to ask you as to two points. Your suggestion about a sort of combined judge, what court is he to use, and what establishment and clerks? Do you mean a newly constituted court altogether?—With regard to the buildings, I take it there would be no difficulty in Glamorganshire, and I do not think there would be in other parts of the country. There are magnificent courts in Cardiff that could be used, and I know other places throughout the country.

12,527. And with regard to staff; do you mean an entirely re-constituted court?—I think, my Lord, the staff could be added to from the present magistrates' staff, and that the whole of the services could be done by the police.

12,528. You mean he ought to be a judge with powers, and to utilise the existing machinery?—Yes, which could be added to.

12,529. Have you any experience of the administration of the Act of 1895 in the country districts?—Well, principally in Glamorganshire, but I have practised in Monmouthshire. I have had a fairly good experience in Monmouthshire and in other counties—Brecknockshire.

12,530. I should like to have your opinion with regard to the administration by the lay magistrates under the 1895 Act?—Well, my opinion is that they give separations far too easily.

12,531. Does that mean that the evidence they accept is too slight, or what?—I think very often the evidence they accept is too slight, and very often they

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[Continued.]

are more sympathetic towards the lady than the stipendiary, and they have not the same power to sift evidence, and very often the matter is talked over before the bench arrives even, and very often it is unwieldy, eight or nine sitting on the bench, and it is not inquired into so carefully as before the more competent tribunal.

(Chairman.) I thank you very much for your evidence, on behalf of the Commissioners.

The Chairman announced that the other witness summoned for to-day, Mr. Plowden, was unwell, and would not be able to attend until a subsequent date.

Adjourned.

Winchester House, St. James's Square, London, S.W.

NINETEENTH DAY.

Tuesday, 24th May 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace the LORD ARCHBISHOP OF YORK.
The Right Hon. the EARL OF DERBY,
G.C.V.O., C.B.
The LADY FRANCES BALFOUR.
The Hon. LORD GUTHRIE.

Sir WILLIAM R. ANSON, Bart., M.P.
Sir LEWIS T. DIBDIN, D.C.L.
His Honour JUDGE TINDAL ATKINSON.
EDGAR BRIERLEY, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

Mr. WILLIAM MCNEILL called and examined.

12,532. You are an alderman and justice of the peace at Crewe?—That is so.

12,533. And were sometime mayor of Crewe?—Yes.

12,534. I think you come here to-day on behalf of the Credit Drapers' Federal Union?—That is so.

12,535. That is an association composed of a number of different associations, the names of which are mentioned in your proof?—Yes.

12,536. I do not know that I need go through them. They represent very largely the whole of the Credit Drapers' Association in the country?—Yes.

12,537. I may take it in that form?—Yes.

12,538. I believe you stand here at your own desire to give us the views of the association on some evidence that was given by his Honour Judge Steavenson at an early part of this enquiry?—Yes.

12,539. I think you have read the shorthand writer's note of the passage which deals with this, and, therefore, I do not know that I need read it through. I will ask you, however, to present the statement and views which you desire to put before the Commission. I may say I have read the full statement which is here, which chiefly consists of comment and statement in connection with that passage in the evidence, and I think it would be simpler if you would kindly state the views you wish to present?—With your permission, my Lord, and ladies and gentlemen, I am quite aware that I am here principally because of certain statements made by his Honour Judge Steavenson, and I am not a witness, I am, afraid, to give evidence on the points for which this Commission has been appointed. But I may perhaps be permitted to say, with your Lordship's consent, that I have had a very long experience of the trade that I represent—more than 50 years. I have also had a very long experience of the working class of my own district.

12,540. Is that Crewe?—Crewe and the North Stafford district of ironworkers and colliers. I have been the representative of the working men of Crewe on the Crewe Town Council for about 40 years, and am also their representative on the County Council of Cheshire for a little over 12 years. I am also their representative, locally, as chairman of the management committee of the only hospital we have for the town,

and I am the chairman of the local education committee, also representing the artisan classes, because we have very little else in Crewe. It is a works, as most of you know, of the great North-Western Railway Company. I have had more than 50 years' experience as a Sunday school teacher and superintendent of a large school of workmen's children for more than 30 years. I know very well, my Lord, these working men in their home life, not merely as their representative. But my experience as a tradesman, going into the homes of these men for more than 50 years, I think possibly, without assumption, gives me some little title, to speak on their behalf. I have had close association with the men of my own trade during the whole of those years, meeting them in their associations. Let me say here for one moment that there are three large associations; one in the North, one in London and the Southern Counties; one in Bristol and the West of England. These associations of traders represent the local societies of the whole of these three large associations which cover the whole of the country. Then they have what they call the Federal Union, composed of nine members, three representatives from each one of these associations, and at their request I have been selected to come here, and controvert and deny—emphatically deny, from my own long experience—the statement made by his Honour Judge Steavenson, which so seriously reflected on the moral character of the men among whom I have spent more than 50 years of my life. And I am also here strongly to say that from my experience of the very best type of working men, both in my own town of Crewe in the large mechanical works, and my own knowledge of the colliers and ironworkers of the district of North Staffordshire, no finer type of working men are to be found in any country than are to be found in the places I name; and with my long experience of these men I absolutely deny that they are capable of the conduct attributed to them by his Honour Judge Steavenson. I have not known a single case in my long experience that would support the evidence given by his Honour Judge Steavenson. Therefore, I am here, at personal inconvenience and cost, and sacrifice of my time (and I have none too much of either) in my 79th year; but I am here fully out of duty to my fellow tradesmen, and also to the working men, of

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[Continued.]

whom I have utmost knowledge that a personal experience could have, extending over half a century (of the very best type of men, I repeat), and I say it is absolutely impossible for those things to happen in the manner that has been described by the witness who appeared here in the person of his Honour Judge Steavenson. These are personal statements, my Lord and gentlemen of the Commission, of my own, my own personal experience; and I am prepared to submit to any amount of cross-examination on the statements I make. But the statement made for the trade, and on behalf of the trade with which I have been associated all those years, is comprised in the statement compiled by the secretaries of the Federal Union representing the whole of the trade, some 10,000 men in trade doing business with an invested capital of not less than twelve millions; doing business every year with not less than six million families; and, therefore, their statement is for the whole of the trade, and mine, of course, is a personal one. With your permission, may I be allowed to ask Mr. Munro, one of the secretaries who is responsible for the compilation of that statement (his eyes are younger than mine by many years) if you will kindly allow him to read it. It will not take many minutes and it will be a great relief to me, and he can do it better than I can.

12,541. He is here, is he?—Yes.

12,542. Well, I will ask him when he takes your place to give us the substance of it?—Thank you. I simply want to add, my Lord, that if you wanted, or any lady or gentleman has wanted to see the best type of working men that our country produces, I would never take them to the police court, I would never take them to a county court. Then possibly not more than 2 per cent. of the customers we deal with are ever seen in the county court, and the best of them are never seen in the police court. The homes of the working men of this country, as far as my knowledge goes, are homes of purity and honesty and cleanliness. Alas, there are exceptions; there are some that fall victims to the three great evils of drinking, betting and gambling; and they fall victims and often come before the court, to my own experience. Therefore I say again, on behalf of the trade I represent, and of which I have had more than 50 years' experience, on behalf of the working men into whose homes I have been going for more than 50 years, and where I have always been welcome, and where they are glad to see me to-day if I have an opportunity of calling; for these two classes, my own trade and the working men of whom I have so much knowledge, I do protest with all the emphasis and power I possess against the gross insinuations made by his Honour Judge Steavenson.

12,543. (Judge Tindal Atkinson.) Can you tell me how many travellers there are engaged in the trade throughout the country?—Not less than 12,000; there may be more, but certainly not less.

12,544. It may be possible that out of those 12,000 there may be some who are not immaculate?—I am quite sure of it.

12,545. Do you think it is possible that the learned judge would have made the assertion he did unless he had some foundation for it?—I should be very sorry to charge his Honour Judge Steavenson with making a statement here of which he had no knowledge, but I think if he has knowledge he ought to give us the benefit of his knowledge, because we would take good care that an individual who so abused his position should have no status in our trade.

12,546. But you do not suppose the learned judge would make statements like that unless he had reason to believe it was true?—No, I should be very sorry to charge any man with making statements like that unless he had some—

12,547. Some foundation for it?—Well, some people express an opinion and others express it as a fact. I am only speaking from facts according to my own knowledge. Of course I do not know the 12,000 men, but I know the men very well in my own district; I have come in contact with them for more than 50 years.

12,548. (Lord Guthrie.) I suppose the part of the statement that you object to is the use of the expres-

sion that the bailiffs have told Judge Steavenson that it was quite common?—I object to that very strongly.

12,549. I suppose it may be that with 12,000, over a course of years a black sheep of course might or almost certainly would arise?—It would be almost a wonder if they did not.

12,550. It would be that expression that you object to?—Yes; I think it hardly possible for such a thing to exist, because you see—

12,551. To exist to any extent?—To any extent.

12,552. Just imagine for a moment that it did exist. You think you would have been certain to have known of it?—I think if it had existed to any extent. Of course an isolated case might occur anywhere and be smothered up and nothing known of it.

12,553. But if it existed to any extent you would be certain to know of it?—Yes. In this way: There are not more than 2 per cent. of our customers that ever go into the county court.

12,554. Tell me this in addition, if you please: Do the credit traders sell women's goods only, or any men's?—Oh, men's; three-quarters of the trade is done with men, and it is all done by pattern, and has been now for 30 years. It was not so when I first began. In addition to that, any man who conducted his business on any such lines must come to grief directly.

12,555. (Lady Frances Balfour.) Have you and those you represent here yourselves asked Judge Steavenson for details and facts?—No, I have not had an opportunity of doing that, but I believe there are two gentlemen here as witnesses who come from the very district—No. 2 district of Judge Steavenson's circuit. I cannot speak for them all.

12,556. They have communicated with him?—I cannot tell that. They are here to give evidence and no doubt they will answer according to their own knowledge.

12,557. But Judge Steavenson was a witness before us, and the right thing would be to go to him?—Judges, I am afraid, are rather difficult to face on private matters.

12,558. But this is not a private matter; it is a thing he said publicly?—I think an appeal has been made to the noble Lord presiding over this Commission asking him to expunge the evidence unless Judge Steavenson proved his statement by evidence, and we are told that that cannot be done, and therefore we are here to rebut the statements and to deny them. It is a terrible thing for 98 per cent. of a trade to be under condemnation because of the opinions of one man, however elevated that gentleman may be. He is human like the rest of mortals and might make a mistake.

12,559. (Chairman.) I should just like to ask you this. We had one gentleman, Mr. George Smith, who attended on behalf of the East London Credit Drapers' Association?—Yes, I know him very well.

12,560. I see when he was asked about this he said, in answer to Judge Tindal Atkinson, "Some of the travellers have to travel in very remote districts right away in the country. (A.) That must be so. (Q.) You cannot always keep a check on them. (A.) No." Then I think this is part of the answer: "I do not know of any case in my districts where it has happened, but it is possible"—

(Judge Tindal Atkinson.) That is my statement, I think.

(Chairman.) Well it may be question; "but it is possible it may happen and not be capable of being detected. (A.) I will not say it has not happened, but here is a statement which would make anyone who reads it think that it was quite common. What is a working man to think of a statement of that kind? (Chairman.) Do you mean by that that it was too broad a statement, although in some cases it may have happened? (A.) I am not going to say it has not happened; anything may happen. I know of no case and my experience is large." I think that is very much what you said to Lord Guthrie?—Yes, tantamount to that. Anything may happen with fallen humanity.

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[Continued]

12,561. I mean that would leave it open to this, that Judge Steavenson may have had some experience that has founded his observation which comes within the exception there referred to?—If I am not mistaken in my recollection he said it was common.

12,562. He did not say it was common; what he said was this. The question was, "Have you actually come across those cases?" (A.) I have come across them absolutely, and I have enquired from the bailiffs who can give cases. I was so shocked on one occasion to hear it that I went to the bailiffs in the principal courts and made personal inquiries, and they said, 'Quite common.' I was amazed, but "there it is"?—We should be very glad, if such a thing exists, if they would produce the name and case.

12,563. All I mean is, it was not Judge Steavenson who said that was quite common, but that the bailiffs said it was?—Well, I would be very loath to believe the statement.

12,564. There is this other point. I have been looking at Judge Steavenson's statement; it does not seem to be directed to any particular class of travellers. Why is it you drapers have treated it as applicable possibly to them? There are other travellers?—I am very much obliged to your Lordship for putting that question. Of course it is a name of approach—tallyman, but it originally arose from the fact of men doing business, selling goods and taking payment by instalments. The customer has a book and the trader has a book, and they ought to tally. It is a name that has never been known in my own district. I have never heard any judge or anybody else call us tallymen, but that is a name given to the trade in different parts of the country generally, used as a name of reproach.

12,565. Is that peculiar to the drapers or are there not other travellers of all kinds?—I really do not know, my Lord; I think it has been applied to the men of my trade.

12,566. I know, but Judge Steavenson's statement is not, as far as I read it, applicable to any special trade. There are many other trades?—We should be very glad if he would say so; if he would exonerate us from it we should be satisfied.

12,567. Do you know what other trades travel round?—Yes, imitation is the sincerest flattery, I am told, and the larger drapers—

12,568. But are there not jewellery travellers of all kinds?—Yes, that is true.

12,569. Well, I do not see why the credit drapers take this as applicable to them, and them alone?—Well, Scotchmen especially are very touchy on their honour; it is characteristic.

12,570. The words are wide enough to include you, you say, but they may relate to other people?—That is the point; if he did not mean us we should be satisfied if he said so.

12,571. Can you say what other trades travel round?—Well, the drapers who keep open shop—

12,572. But what other trades have travellers; jewellery?—Oh, yes, and furniture dealers and iron-mongers.

12,573. I think that is all you desire yourself to say; and the name of the gentleman you mentioned is what?—Mr. Munro, one of the secretaries of the Union, who is responsible for the statement. I should be glad to answer any other question that any member wishes to put to me. The truth generally comes out in cross-examination, and I should be delighted.

12,574. As I said before, this is not an issue we can try?—I quite know that.

12,575. We have given you the opportunity of making a statement?—But I should be very pleased if the Commission—you yourself or any member of the Commission—wished to ask my opinion on the question of divorce.

12,576. I am afraid that will be travelling a little outside what you have come to say. We have so much of it?—All right. I do not wish to impose my views on the Commission, but I think I have experience which no judge can possibly have. The judges do not go into the homes of the people; that is where you find the real men and women in the country, in their homes, in the churches, in the Sabbath schools, in the reading rooms.

12,577. If you would like to do that you will have to prepare a proof and send it to the secretary to consider whether it be desirable, with the mass of evidence, to require anything further. At present we have no proof or anything we could follow?—I do not want to tender any evidence, my Lord, except such as this Commission desires.

12,578. Well, you will have your opportunity, if you desire to express your evidence, by sending the proof of it, and it can be considered?—I was here to prove to this Commission that the trade I belong to is incapable—I do not say an isolated case—

12,579. I think we have had that point?—Yes.

Mr. ALEXANDER MUNRO called and examined.

12,580. What is your position?—Joint secretary to the Credit Drapers' Federal Union.

12,581. Is it you who have prepared this statement that I have?—Yes.

12,582. Well, I have read that through and we can consider it. Perhaps the shortest and most effective way would be for you to state the points that you wish to present to the Commission?—With your permission, my Lord, if you will refer to the third page of the statement there, we traverse, as far as we know, the reported remarks of Judge Steavenson. The remarks in the "Telegraph" and "Standard" are not the same as yours, but still they are a fair report, and we are content with these.

12,583. Will you just state what is the particular comment that you desire to make on it?—On the fifth page at the top: "Early in the year 1908 it was estimated by statistics carefully collated for a business purpose that in the year 1906 some 140,000 (rather under) plaints were issued from the various county courts in the kingdom, the plaintiffs being members of the credit drapery trade. It is fair to assume that a proportion of these came before his Honour Judge Steavenson, and that that proportion for that year is to the full extent the only means of knowledge from which the bailiffs could vouch that a custom of any sort was common, or that his Honour could depend upon for proof or support of his statements."

12,584. Why do you say that, when we are told there are a great many other travellers than drapers?—It may be contended we are quick, or too quick, to take offence, but it is well known that drapers and others that travel are stigmatised as tallymen. It is thought by some that it further humiliates these men to be called tallymen. If other trades are referred to by Judge Steavenson, and not this one particularly, we should like to say on their behalf that we deny it absolutely. It cannot be possible for any trade to be carried on if such a cancerous growth existed as that which the judge alleges. The trade would commit commercial suicide quickly. I should like, with your permission, just to follow on and read you that statement, because one or two statistics appear there that I think will be convincing to the Commission:— "That proportion for that year is to the full extent the only means of knowledge from which the bailiffs could vouch that a custom of any sort was common, or that his Honour could depend upon for proof or support of his statements. During that year, 1906, county court judges and bailiffs did not deal nor have any practical acquaintance with more than 140,000 cases (to be exact 135,344 cases) in which credit drapers were interested. During that year 1906 travellers, canvassers and collectors waited upon, at the lowest computation, at their own homes, and did business there with at least six million families every week in the year, while the presumption is

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" that the customers dealt with numbered fully more
 " than ten million persons with whom business was
 " done honourably and in a business-like way to the
 " mutual satisfaction of each of the parties. As a
 " matter of common sense, gauged without other
 " judgment or knowledge, is it a reasonable conclusion
 " that the comparison from which county court judges
 " and bailiffs acquire expert knowledge of social or
 " moral conditions can be adequately based or ex-
 " pressed in such startling language as that employed
 " by Judge Steavenson? Here we have a distinguished
 " member of the judiciary of England daring to assert
 " openly before a Royal Commission that, from
 " experience and 'personal knowledge,' gained by
 " contact with less than 2 per cent. of the clientele
 " of the credit draper, that it is 'quite common' for
 " these men to be guilty and provocative of adultery
 " of the foulest type. By superficial knowledge
 " acquired through his court, is he or any other man
 " justified in asserting that 98 per cent. of the working
 " classes of this country have sunk so low as to sell
 " the honour of their wives and mothers and sisters for
 " 'apples of Sodom.' His Honour Judge Steavenson
 " does not know the people, either customer or trades-
 " man, whom he so basely slandered; they have never
 " entered the precincts of his nor any other county
 " court. The report of Judge Steavenson's cross-
 " examination"—

12,585. That is only saying it is the same as in the papers; you need not refer to that?—Then may I take you down on to page 6: "I have the honour to ask your Lordship and the members of this Commission to receive, and very respectfully my friends and I ask your consideration of, the prayer of our petition that you will, in justice to the masses of working people concerned, and in fair play and justice to the men directly charged, cause to be removed and expunged from the records of the Commission the uncorroborated statements of Judge Steavenson as against the members of the credit drapery trade, designated

" by his Honour 'tallymen.' The petition bears the
 " signatures of some 1,700 tradesmen, many of whom
 " have spent their lives in trade amongst the working
 " classes and against whom the breadth of scandal has
 " not been suggested, much less uttered; very many
 " of the subscribers to the petition have given valuable
 " public service in the various towns in which they
 " became residents long years ago, many of them too
 " have been honoured by their fellow citizens by being
 " elected to offices of dignity and trust, while such, the
 " older men, beg you not to lightly dishonour their
 " life's record by permitting the unwarrantable and
 " unEnglish utterances of one man to stand as against
 " the lifelong conduct, testimony and knowledge of
 " thousands. The younger men who subscribe to the
 " petition, and who are jealous of their own and their
 " fathers' reputation and honour, pray that you will
 " help them to wipe out the attempted stain, and in so
 " doing assist and encourage them to go forward in
 " honour and peace as men among men. There is
 " prefixed to the petition a schedule of the towns and
 " districts subscribing, and while the verbiage may be
 " informal and void of legal technicality and precision,
 " it is none the less the earnest request of business men
 " of honourable and pure instincts who seek to do their
 " duty among their fellow men as in the presence and
 " fear of the Almighty. I most earnestly beg your
 " Lordship's consideration therefor, and trust that all
 " the members of the Commission may somewhat
 " appreciate our position and grant to the fullest
 " extent practicable the spirit of our prayer." That
 " statement is signed by Mr. McNeill and you have it in
 " your hand.

12,586. The petition, you say, has the signatures of this number of traders?—Yes, the petition is here.

12,587. You have stated the effect of it?—Yes, that is so. (*The petition was produced.*)

12,588. Is there anything you wish to add to that?—No, my Lord.

Mr. RICHARD MILLICAN called and examined.

12,589. (*Chairman.*) Your name is Richard Millican?—Yes.

12,590. Of Beckstone House, Harrington?—Yes.

12,591. You are a member of the Cumberland County Council, and a member of the Workington Town Council and Harrington District Council?—Yes.

12,592. And you have held public offices for some years, and been a justice of the peace for two years?—Yes.

12,593. You are a travelling draper and boot merchant, and have been in the trade 32 years; you have four shops, and employ tailors, bootmakers and travellers?—Yes.

12,594. Does your business cover the whole of Cumberland?—West Cumberland, my Lord.

12,595. I see you say that most travelling drapers do not carry goods for sale, but samples, and take orders, and call for payment after delivery?—I may qualify that by saying none of them carry goods to sell.

12,596. Now what do you wish to say?—I wish to say that I have not the slightest doubt that Judge Steavenson, when he made his statement about tallymen, meant the travelling drapers, because it is notorious in our district that he is much at enmity with them. I never heard the term used except with regard to us; I have not interviewed Judge Steavenson personally. We thought—my fellow tradesmen and myself—that it was better to come here and state our case publicly. Of course, I do not know what we may do in the future. It is just possible that we may interview Judge Steavenson after we have been before this Commission. Of course, we should have to go into his room and see him privately, or he might commit us for contempt of court; we should have to do it privately. I have never sold knowingly to married women without the husbands' knowledge, and my instructions to my men are not to take orders unless everything is correct and the husband has a thorough knowledge of the debt, and I also say that if we, as a

trading class, did our business in that manner we should very soon come to financial ruin. I have been in business for something like 29 years, and I have had hundreds of customers on my books in my time, and at the present time I have families that are of the second generation. We always take a pride in following up our family connections, and if there were any truth in the statement made by Judge Steavenson that would be impossible. Not only on behalf of myself, but of the working men's wives, amongst whom I have the honour to trade, I wish to repudiate the foul slander cast on us. I may say, speaking personally of Judge Steavenson, that I have no fault to find with him, and no grievance against him. Since Judge Steavenson made that remark, in that district I have been twice returned top of the poll as county councillor and district councillor, so that, personally, it has had no effect on me. I am here to protest on behalf of my fellow tradesmen.

12,597. You say you have made some inquiries?—I asked two bailiffs that belong to our court. I was in a railway train, and I met them in the carriage, and this cropped up and they introduced the question, and I put it to them in front of several gentlemen well known in the district, and they say they have never heard such a thing; and we have asked one personally since, and he reiterates the statement.

12,598. You have spoken to two of them?—Yes.

12,599. I suppose there are a considerable number in the district?—Yes, but I understand my fellow tradesman, Mr. Bell, who gives evidence next, will deal with the question. I believe they have all been asked.

12,600. (*Lord Guthrie.*) Drapers are called credit drapers. What credit is given?—Well, the system is to take orders on the instalment system. Do you mean the amount of credit?

12,601. Yes?—Oh, possibly an average of 2l. to a respectable working man, and he pays so much a week or a fortnight, or a month as the case may be.

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12,602. What is the largest amount you have known?—Possibly 6*l.* or 7*l.*; it may have run to 10*l.* in certain cases.

12,603. How often are the instalments collected?—Weekly, fortnightly, and monthly, and in my own case I have a considerable amount of half-yearly trade.

12,604. (*Earl Derby.*) I should like to ask one question. Do you look upon the word tallyman as being a slur?—I do, my Lord.

12,605. But surely in the north country it is very largely used. I mean it is not generally looked upon?—It is not used in a respectful manner, but as a slur on our trade when anybody wants to make a skit upon us.

12,606. I have heard the word tallyman used by people who certainly did not want to make a slur on your trade?—Possibly you may, my Lord, but your experience has been different to mine.

12,607. Well, yours is much bigger than mine. I thought it was a very old-fashioned word. There is one matter I should like to ask you, whether you say this applies to every traveller that you never sell to a married woman without her husband's consent?—That is so.

12,608. You would say as a general rule travellers

do not sell to a married woman without her husband's consent?—I do. I assert that.

12,609. There again your experience and mine are different?—I may say my instructions to my canvassers are—

12,610. I am not talking of you personally, but generally?—Oh, I cannot say it has not been done, and I do not wish to make the statement that my trade is better than any other trade. I simply say we are human like the rest of traders.

12,611. Of course there are black sheep in every fold?—Quite so.

12,612. Have you ever known of any case where a complaint has been made? Amongst so many there probably have been cases where complaint has been made and the man has been got rid of because the customers have objected to his behaviour?—I have not. I have had complaints when the husband and trader have been deceived, but speaking from my own experience I always give the man the benefit of the doubt, and we have suffered for it.

12,613. You mean when goods have been sold?—Yes.

12,614. (*Earl Derby.*) But morally?—No, not morally; I have never heard a suggestion of the kind.

Mr. WILLIAM BELL called and examined.

12,615. (*Chairman.*) Your name is William Bell, of Dalton Road, Barrow-in-Furness?—Yes.

12,616. Are you a Scotch or travelling draper?—Yes.

12,617. Why is it "or"; do you only travel in Scotland?—In our part of the country, in the Lancashire towns, they call travelling drapers Scotchmen, and any family would call him our Scotchman.

12,618. You have been a long time in business?—I was bound apprentice in 1857.

12,619. Do you employ other travellers?—Yes, we do. If you will allow me to make a statement. You see his Honour Judge Steavenson in making the statement he did, said that we as travellers were in the habit—it makes it appear as if we were constantly selling goods to working men's wives unknown to their husbands, and having got them into this difficulty, advantage was taken of their difficulty—wanting to conceal their debt from their husbands—to bring about this wicked thing that he describes; because, you see, the one is entirely dependent on the other.

(*Chairman.*) I have just been looking at it. I do not find any statement about unknown to the husbands.

(*Lord Guthrie.*) He said they are afraid to let their husbands know.

12,620. (*Chairman.*) "Afraid of her husband"?—Yes, that is the word.

12,621. You infer it from that?—Yes, and he has said it over and over again in our court. That is the position; he wants to make it appear that the woman is placed in a difficulty and the man takes advantage—

12,622. What do you say he says over and over again in his own court?—He will actually ask a man if he knew of all the details of the debt. If I were the plaintiff and had given my evidence in proof of the debt and the man came and said "I did not know my wife owed this money." "Did you know anything of it?" "Oh, yes, I knew they were doing business, but not as much as that," and he would not let me give evidence after that. He would try and induce the man to say he did not know anything about it. He has made it most difficult, and we have made a resolution in Barrow that we cannot go into the court at all because of the harm we have suffered at this man's hands. I know he represents the Crown and is a privileged person, but that is the fact. Now if you will let me make a statement I think in giving my own business methods and experience I am giving a fair average sample of the experience and business methods of all the credit drapers I have come into contact with in my 53 years' experience. My younger brother served his time at the same time and place as I did

and with the same people, and when we commenced business we took over debts amounting to 4,200*l.*, for which we had to pay 20*s.* in the £; that represents in connection with the customers amounting to something like 1,000 or 1,100 people. Since this we have gone over the same ground. Of course these people are not still living in the town of Kendal where I had 200 customers; only two are living to-day and there are 600 people buried in the Kendal cemetery that I have done business with, but all along I have kept the same connection—the sons and daughters and friends and relatives and neighbours—without reproach all that time. What I want to say is this, that we have never had any occasion to force our goods on anyone; we never did. I have not taken any public office; I have steadily refused because I had a large family and I gave all my time to my business, but I have had ill-health through overwork—not that I have tried for work, but one customer introduces another and we are able to discriminate and refuse customers if we think it is not going to be a profitable account. We have never had to force our goods on anyone, and I do not know of anybody in the trade who finds it necessary to do it. We keep 15 men at work and five girls at work with machines making men's clothing, and five-eighths of the whole of our trade is with men.

12,623. What do you say about this statement with regard to tallymen?—I know as a fact that the word tallyman is used here; in Lancashire they are called Scotchmen.

12,624. The point is whether the suggestion of improper action on the part of the tallymen has in any case been found to be correct?—I have never heard even a suggestion of it. In the homes of the working people I go into 95 per cent. of them are clean homes. The women are pure minded, clean-living, modest women, and I should as well think that a man could insult one of these women as he would say anything insulting to his own sisters.

12,625. You have never met with any case?—No, I have never heard of one.

12,626. I suppose these husbands do frequently set up the defence that the wives have not told them?—I never heard that till Judge Steavenson came to Barrow, but he has corrupted the whole district.

12,627. They do set it up?—Now they do. There are more dishonest people in Barrow than ever before, and they have all been cultivated carefully by that man.

12,628. (*Judge Tindal Atkinson.*) Do you ever proceed by way of committal against these men?—Yes.

12,629. And do not they say: We never heard of this until the summons for committal?—No, I have never heard of that. I have never been in court when

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there has been anything of the kind, but I have heard there are such cases.

12,630. Have you known cases in which the judge has directed a new trial in order to investigate if the wife had authority?—Yes, I have known Judge Steavenson do that. We had a man who came up and denied that he had got the goods, before Judge Steavenson, and we had four witnesses who were in the place when the man came; we measured him, fitted him on with his suit and supplied it, and he came before Judge Steavenson and said his mother had got the goods, and Judge Steavenson said, "Oh, I see, this is a case where this tallyman has come and persuaded your mother to get the goods and wants to charge you with them," and when my brother wanted to speak in defence he said, "Hold your noise or I will send you out of court." We wrote to him, and then after that he said when he came into court, "Is the man Bell here?" and somebody said no, but he was representing him, and he said, "I understand I owe him some apology. Call the next case on."

12,631. (Chairman.) I think we are travelling outside what we need go into?—I should like to say that all the bailiffs of Judge Steavenson's circuit have been

seen personally by men in our trade, and they every one say—

12,632. You have not seen them yourself?—I have seen the three in Barrow, and at the last week in Whitehaven—

12,633. Have you communicated direct with Judge Steavenson?—We have not. We once sent a deputation to him who were very badly received. We considered the matter at a meeting of our association, and we thought it better not to do so.

(Chairman.) If Mr. McNeill desires at a later period to give evidence on the divorce question he must send in a proof of it.

(Mr. McNeill.) I have no desire unless desired by the Commission to do so.

(Chairman.) Well, we have a mass of evidence and we have laid it down always that if people desire to come and present views they must send a proof in.

(Mr. McNeill.) I only gave the hint because I have such long experience of the classes that are affected.

(Chairman.) You will have your opportunity if you desire to use it.

His Honour Judge JAMES VALENTINE AUSTIN called and examined.

12,634. (Chairman.) You are the county court judge of?—Circuit No. 54, my Lord, which includes Bristol, Weston, Wells, and Axbridge; one large court and three small ones.

12,635. How long have you been there?—Nearly 18 years.

12,636. You sent a shorter proof which has been circulated amongst the Commissioners, but I have to-day a certain elaboration or extension of it?—That is so.

12,637. May I take you then from that?—If you please.

12,638. Will you first give us your view as to whether you think it desirable or not that jurisdiction should be conferred on the county courts in divorce matters?—Yes, my Lord. "I think that on the whole it is desirable that Parliament should confer jurisdiction in divorce on county courts in cases where the means of the parties are small, say where the joint income of husband and wife does not exceed 150*l.* per annum. It is of course true to say that the same law applies to rich and poor, but when, as at present, the remedy is out of reach of the poor, by reason of its cost, it is equally true to say that there is one law for the rich and another for the poor."

12,639. Then you make the presentation of your views on a suit *in formâ pauperis*?—Yes, that is told me by a gentleman called Daniells, who is secretary of the Bristol Legal Free Dispensary, where a certain amount of assistance is given to poor people, not by way of inviting litigation at all, but to help them in their difficulties and tell them where to go to get a remedy.

12,640. Is this his experience?—Yes, because he told me of a case *in formâ pauperis* which he thought was an exemplification of the difficulty which is present when a very poor man comes to the High Court and tries to get a divorce *in forma pauperis*.

12,641. Well, perhaps you will give us the effect of it?—If your Lordship pleases: "As regards a suit *in formâ pauperis*, that is at present a very unsatisfactory remedy. I believe that the line of pauperism is drawn in the High Court Registry at 1*l.* 5*s.* a week, which is much too low a limit. A suit *in formâ pauperis* can in most cases only be carried through by the help of some well-to-do and philanthropic person. A solicitor called Daniell, who is secretary to the Bristol Free Legal Dispensary, informed me that he once carried to a successful issue a divorce suit *in formâ pauperis*. This was in 1907. The London agent and counsel acted free of charge, but Mr. Daniell had to find out of his own pocket 10*l.* for forms, engrossing and witnesses' expenses. It is curious to note that this case seems to have produced a number of applications to the Bristol Legal Dispensary for help in divorce. These

applications were abandoned as soon as the parties realised the difficulty of raising the necessary funds for witnesses' expenses and out of pockets."

12,642. Does that lead you to any conclusion as to the demand for opportunity?—That was the inference, my Lord. It brought it to my mind that these divorce cases—these inchoate divorce cases—cropped up when one man got a suit through *in formâ pauperis*, and then they were dropped when it was found that there was nobody to find the out-of-pocket expenses.

12,643. Do you think there is some demand?—I think there is from enquiries I have made. "There is no doubt some demand for divorce amongst the poor, but in my opinion the demand is not a very strong one, and the number of suits that would be brought if jurisdiction were given to the county courts would not, I think, be so great as to cause practical inconvenience, at all events after the first few months. There are many reasons why the working classes will not come in great numbers for divorce. In the first place there is not, in my opinion, so much adultery amongst the poor as there is amongst the well-to-do classes. I have formed this opinion upon the information partly of persons who work from philanthropic motives amongst the poor; secondly, of solicitors who have to do with the working classes in relation to cases under the Workmen's Compensation Act; and, thirdly, of debt collectors. The lowest class of all, the tramps and the occupants of common lodging-houses, do not trouble themselves about matrimony at all, and they can be left out of the question."

12,644. Is that a sound conclusion?—I think so, my Lord, from my enquiries. It is so seldom you find a tramp married at all. He almost always contracts some irregular liaison if he has any at all—any partnership.

12,645. You are leaving that out of the question of any real consideration with regard to divorce?—I think so. They never get married, and so they never want divorce.

12,646. You do not mean left out of the question with regard to the general improvement of the morality of the country?—No, indeed. I thought I was only confining myself, my Lord, to the question before the Commission. "In my opinion the artisan and respectable labouring class are as a rule more faithful to their spouses than those who have more money. They have harder physical work, less food, and less leisure than the well-to-do, and they live more together—under each others' eyes."

12,647. Then which of these classes is it that comes for these separation orders? Those must be married people?—Those must be married people and not tramps of the lowest class of all—the residuum, as some great statesman called them,

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[Continued.]

12,648. A bit above that?—A bit above that. "Another reason for supposing that there will not be a great demand for cheap divorce is that the working class have got accustomed to what they consider to be the impossibility of getting money to pay for divorce, and frequently they solve a matrimonial difficulty by taking irregular partners. This form of immorality would be diminished if divorce were made cheaper. Moreover, however cheap divorce be made, even if it became possible to get a divorce in the county court for say 5*l.* to 10*l.*, that sum would still remain a very large one for a man to find who has only from 1*l.* to 2*l.* a week to live on."

12,649. Would you pause there? To what extent does your own experience enable you to tell us that those who have not the means, and are married, have formed irregular unions?—Only from what I have been told by those who have worked amongst the poor in Bristol, my Lord. I have been told by a man called Colborne, who perhaps knows more about the poor in Bristol than anybody else, that that is his experience. He is the warden of the Broad Plain Settlement. He has great experience amongst the poor, and he says that is the general result of unfaithfulness on the part of the wife—that they separate and form irregular unions.

12,650. That is not amongst the lowest class?—No.

12,651. Are you able to say to what extent those irregular unions are formed?—He does not give me figures because I do not think he ever kept them, but he told me it was frequent.

12,652. Is the point that it would not be so if they could apply for divorce?—He thinks that that immorality would appreciably diminish if divorce could be got at a reasonable sum. A man who wanted to get a cheap divorce, however cheap it were, would have to go to a money-lender as a rule, because the ordinary working man with 1*l.* or 2*l.* a week does not save. That is my experience as a county court judge; he does not save. "He would probably have to go to a money-lender and pay in the end about double the amount borrowed. He would have very little chance of getting costs or damages out of a co-respondent in his own walk of life. In the case of a wife seeking divorce from a working man husband, the difficulty of expense would be greater still," because the procedure would be something of the same sort as now with regard to the wife's costs, and the difficulty of extracting money even by attachment would be very great indeed. "In any case therefore the question of expense will always remain as a strong deterrent to divorce amongst the poor. For all these reasons I am of opinion that the extension of divorce jurisdiction to the county courts would not produce any great cessation of work. I think that jurisdiction should be given to all the county courts. The chief benefit of the county court system is that it saves the time and travelling expenses of suitors and their witnesses," and of course the great bulk of expense when a case has to come to London is the travelling expense of the witnesses and their maintenance in London till the case is tried.

12,653. Does your experience lead you to think that if that extension of jurisdiction is conferred so that this class of people we are speaking of could go to the county courts it would or would not improve the state of morality?—I think it would improve the state of morality by setting those classes free to marry again who are living now in adulterous unions.

12,654. Do you think it would encourage that state of things if they could get a divorce?—I do not quite follow your Lordship's question.

12,655. It is suggested if you give this increased jurisdiction so that the opportunities of bringing a divorce are greater that it would tend to encourage immorality?—I do not think so. I think it is a choice between two evils. I think divorce is an evil, but I think it is a less evil than the evil caused by its absence.

12,656. Then with regard to machinery, you proceed to discuss that?—I say, "There would be in my opinion no difficulty in adapting the machinery of the county court to divorce proceedings. A simple statement of claim and defence would be sufficient to raise the issue between the parties. The allegations in the statement of claim should be verified by affidavit." Now I come to a matter which I think is very very important if there is any cheap divorce given. "The Treasury should if possible be induced to take in divorce proceedings fees which are not so excessive as the present county court fees." May I say in passing, in the large court in my circuit there was paid in 1907 no less than 9,200*l.* odd in fees. The present fees are too high, and one of the ways in which if divorce is ever given to the county courts, it might be made cheaper is by having more moderate fees.

12,657. Those figures do not convey very much at the moment to me because so much depends on the number of suits?—I am afraid I have not the book before me.

12,658. Would that indicate?—In Bristol I have something like 23,000 entered in a year.

(Judge Tindal Atkinson.) 21,933 plaints entered in 1909.

12,659. (Chairman.) Well, supposing there was a 10*l.* claim—a substantial little claim for debt; what is the fee?—I have not the table of fees before me, but I think for 10*l.* it would be 10*s.* I am speaking subject to correction.

12,660. I mean the whole fees from beginning to end of the case?—Oh, the fees altogether?

12,661. For that case?—Yes; I am afraid I could not tell your Lordship offhand, but why I mentioned it was that there is a good deal of complaint—

(Judge Tindal Atkinson.) The fees are given in the list of tables.

(Chairman.) What is the total?

(Judge Tindal Atkinson.) At Bristol the total was 10,553*l.*

12,662. (Chairman.) But that does not convey anything whatever to my mind. One wants to see what a small and substantial case costs. You see what I mean?—I do indeed, my Lord.

12,663. You would have to assume that the divorce case is of a substantial character though it is between extremely poor people, and one in which, if the same scale of fees is adopted, it would be too heavy?—You see, my Lord, the smallest possible fee for entering a plaint is a shilling. If you bring a suit for one shilling or two shillings it would be a shilling to enter; then twice that fee for hearing; that is taking the very lowest. I am afraid I could not give your Lordship the figures.

12,664. Perhaps you can tell us this, to put it in another way. Assume that jurisdiction were given to a local court, and limited, as you said, to people with an income of 150*l.* a year, there would be two alternatives: that is, no fee at all or a moderate total court fee?—Yes, a moderate total court fee.

12,665. What would be your view for a moderate total court fee from first to last?—A sovereign, my Lord.

12,666. I think we have it that in the High Court it was 8*l.* or 9*l.* Will you please proceed?—"It seems to me to be wrong to suppose that county court judges are not capable of dealing with the issues that arise in divorce. Lord Mersey's suggestion that the evidence should be taken before a county court judge and the decree pronounced in the High Court seems to me to be entirely unworkable. The employment of an itinerant High Court judge who would hear divorce causes in the larger centres of population would not, in my opinion, result in either speedy or cheap decrees."

12,667. Now we want the reason for those points?—If the witnesses have to go to the centres of population they will incur travelling and maintenance expenses—I do not say as much as going to London, but considerable expense. Then, if one itinerant judge were appointed for the whole country it would take him a long time to go the whole way round. That is why I think they would not be cheap or speedy.

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[Continued.]

" Jurisdiction in divorce should not, in my opinion, be given to magistrates, either ordinary or stipendiary. Stipendiary magistrates are most of them very hard worked already, and ordinary magistrates are only laymen, who have to take the law from their clerk, and who are usually very anxious to finish the day's work and get back to their business. In my opinion a bench of magistrates is not a suitable tribunal to try divorce cases. If divorce jurisdiction is given to county courts, solicitors should have the same right of audience as in ordinary county court cases."

12,668. On that last point, if the scheme suggested from Scotland were adopted it might be possible to combine the solicitor and the advocate under the Poor Law scheme?—Yes, I have read Lord Salvesen's evidence.

12,669. Would that meet with your views?—I think so, entirely.

12,670. Because, although more expense, I take it it would be an advantage to the court to have professional help?—Of course the court is always grateful, whether it is a small or a great court, for the best assistance it can get.

12,671. Then the next paragraph?—"It has been suggested that the jurisdiction of justices under the Summary Jurisdiction (Married Women) Act, 1895, and section 5 of the Licensing Act, 1902, should be transferred to the county court. If this were done in Bristol I should never be able to get through my work. According to a return made by the clerk to the Bristol justices, the average number of applications to them under these Acts is about 700 per annum, resulting in the issue of about 200 summonses and the hearing of about 150 cases. It would be idle for me to say that I could not do more than I do at present, but if I had to take this work I should get no rest at all."

12,672. Would you mind telling us, because I am sure Judge Tindal Atkinson will ask you if I do not, how many days in the year are you sitting?—170, approximately.

(Judge Tindal Atkinson.) 172 last year.

12,673. (Chairman.) And may we ask, without trespassing, what becomes of the remaining 180 days?—I get a long vacation of six weeks. I never sit on Saturdays; I only sit the first five days in the week.

12,674. May I take it you sit the first five days of every week, except?—Oh, no, my Lord; I do not. What happens is, that I sit some months 15 days in Bristol, and three days out, and some months not quite so many. Of course, I fill in some days with special work in the sense that if a very long case is coming forward I encourage the parties to take a separate day apart from the ordinary work, that it shall not clash.

12,675. Does the amount of sitting that Judge Tindal Atkinson is stating represent practically what work could be done?—Oh, no, my Lord; I could do more work. I have no particular desire to, but I could.

12,676. That is what made me ask you, why you could do no more, according to this paragraph you have just read?—I have not said, my Lord, that I could not do any more. I think in the earlier part of my evidence I said I could do more work.

12,677. Yes, I see "not"?—Yes, I do not pretend I am overworked. Bristol is a hard place, and I sit long hours. I very often sit from 10 to 6 day after day.

12,678. This is dealing with the point of adding to the county courts the separation business?—Yes, my Lord.

12,679. But having regard to what you say about there not being a great rush of divorce cases after the first few months, do you consider that practically you could cope with that if it were added?—The divorces?

12,680. Yes?—Yes, my Lord, but certainly I could not cope with three separation cases a day added to my work, because many of them take many hours before the magistrates. When once you begin to investigate the trouble between husband and wife it is almost always a long business. "If, however, Parliament determines to give any sort of divorce jurisdiction to the county courts, the justices should have

" power to decline jurisdiction in separation proceedings, and remit the matter to the county court in cases where a dissolution of the marriage is desired by either party, and there is some reasonable ground for supposing that a dissolution might be granted."

12,681. That would, in fact, give the magistrates the power to send any difficult case to the county court?—In a divorce case, not a separation case pure and simple, my Lord, but only where divorce was asked for, and there was some reasonable ground for supposing that there might be a divorce granted. "Upon the whole I think that the present machinery for granting separation orders works well, and the orders are generally beneficial to the class amongst whom they are usually enforced. Amongst well-to-do people personal violence does not usually result from a conjugal difference, but such violence is, of course, much more frequent amongst the working classes. Separation orders give a sense of security to the wives of the poor, and protect the wives in really serious cases of cruelty and refusal to maintain. In the case of young married people they act as a wholesome warning, after which the parties in the great majority of cases come together again. These orders have not the permanence of a decree for judicial separation, and to that extent they are not so prejudicial to morality."

12,682. But in form they have exactly the same effect?—I know they have, my Lord, but they have not the same binding effect in the classes among whom they are pronounced.

12,683. Does that lead you to any conclusion as to the desirability of making them temporary in the first instance?—I think so. I think it would be very desirable indeed if separation orders were made for a short fixed period in the first instance.

12,684. Then how would you follow that out?—In most cases, my Lord, as I think I said, when the parties are young they come together again, no matter what order has been made, whether a permanent order or otherwise. Then if they do not—

12,685. I quite appreciate where the result is to bring them together in the end, but how would you proceed if you make a temporary order, and it is really a case in which there should be, as it turns out in the end, a permanent order?—Then the parties should appear before the magistrate and say they cannot live together, and it should be permanent.

12,686. Would you consider it right then that that particular application on that particular order should be made to the court having divorce jurisdiction?—It might possibly be desirable. I do not know.

12,687. But the point you make is that it would be better to be temporary to begin with?—I think so, and I think the separation orders, by reason of the fact that they are not recognised and treated as being so permanent as judicial separation, have not the evils of a judicial separation. "I think that the remedy given to wives by the Act of 1895 should be extended to husbands. It not unfrequently happens"—and indeed I have come personally across cases in my own experience—"It not unfrequently happens that a small or inoffensive man finds himself seriously and habitually ill-treated by his wife. He may bear this ill-treatment for some time, and finally turn on his wife with serious results."

12,688. That exhausts No. 2?—Yes, my Lord.

12,689. Then No. 3 about reports?—"In my opinion no newspaper reports of divorce proceedings should be allowed except a statement of the names of the parties and their counsel, the nature of the relief sought, the grounds upon which it is sought, and the result of the proceedings. It seems to me to be idle to suppose that the publication of the details of divorce cases acts as a deterrent to adultery, or that the example is in any way wholesome."

12,690. Is that view formed on any experience?—No, my Lord, I am afraid it is a matter of opinion pure and simple. "No good can come to any man or woman from reading the reports of divorce proceedings. The details of such proceedings even in

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"the most respectable newspapers can only be read for the purpose of gratifying a prurient curiosity."

12,691. Then you proceed to the consideration of amendments?—"In my opinion adultery on the part of a husband should of itself be ground for dissolution of the marriage. I have never been able to see any real basis for the present distinction. Dr. Johnson's reasons are somewhat antiquated and are formed on the sacred right of property"—as he said confusion of progeny. "A wife who discovers that her husband has been guilty of what Lord Mersey called 'accidental' adultery has now her remedy if she chooses to take it, the very unsatisfactory remedy of judicial separation, which frequently leads to immorality and is good for nobody. The wife may in such a case very likely forgive her husband. If she does not, she ought to have the right to free herself from him altogether. I am inclined to think that wilful desertion for four years should be, as it is in Scotland, ground for dissolution of the marriage. Such a desertion appears to me to amount to a total repudiation of the contract of matrimony. I do not think that a sentence of penal servitude should be ground for divorce; the moral obliquity which brings about such a result has *prima facie* nothing to do with the contract of marriage. Nor do I think that the fact of hopeless insanity supervening after marriage should be ground for divorce. Insanity is not the act of the party, but a misfortune; and if insanity were allowed as a ground for divorce I cannot see why paralysis should not be a reason also."

12,692. May I put two points to you on that? With regard to insanity, is it not usual to find that either it exists from hereditary causes or in a vast number of cases is brought on by misconduct?—I believe doctors say so, my Lord. General paralysis of the insane is almost always the result of immorality.

12,693. Take those cases. Supposing it is impossible to prove the act which has caused that, but the fact remains of the insanity, would that necessarily be what you would call misfortune and not the act of the party?—No, but the difficulty would be in that case the proof.

12,694. Might it not be in those cases if it were shown to have originated in misconduct different from the mere instance of hereditary insanity? I only throw that out?—I quite follow what your Lordship says, but I should be inclined to think that it is better to err on the side of making divorce too difficult than of making it too easy, and if you get the principle such as the one I have suggested that divorce is only to be granted where there is something that amounts to a repudiation of the contract of matrimony, then you have a principle. If you get outside that you are running into the question of convenience or possibly the desire of the State that there should be the best possible progeny.

12,695. I was going to ask you that. Your principle is confined to the mutual performance of the contract between the two parties?—Yes, the marital contract.

12,696. But we have had it suggested that the State is very much concerned and that is why it has a King's Proctor to intervene. If so, considerations apart from the mutual performance of the duties present themselves. If you say the State is interested in the happiness of the family and the promotion of offspring?—Yes, of course, I fully appreciate the difficulty of the position, but if I may repeat myself once more, if you have to deal with something which is *prima facie* an evil, such as divorce, you should not make it too easy and you should not make the grounds of it too many. If you once start on the downward path, I do not quite see where you are to stop short of the American system in some of the States, where you can get a divorce for anything or nothing.

12,697. Perhaps you will conclude your valuable note?—"Divorce is an evil, but it is a lesser evil than the immorality that would be caused by its absence. In my opinion divorce should not be made too easy. Nothing should be ground for divorce that does not amount to a repudiation of the contract of matrimony." These are my notes, my Lord,

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12,698. Is there anything you wish to add to those?—No.

12,699. (*The Archbishop of York*.) You said just now that you regarded divorce as an evil; would you tell us why it is an evil in your judgment?—Because, my Lord, every breach of such a sacred contract as matrimony must be an evil.

12,700. Then you regard it as an evil in itself?—I do; I look upon it as an evil in itself, but a less evil than the evils that would come in its absence.

12,701. Then you were speaking about adultery among the poor as comparatively rare?—I would not say that; I should say it was less.

12,702. What do you mean by poor?—The words I used were the artisan class and the respectable labourer.

12,703. Would you agree it is essential to make the threefold distinction between the artisan and the regular labourer, and secondly the casual labouring class, which is mainly the class coming before the court in separation matters; and, thirdly, the vagrants?—I am not quite sure; I speak subject to correction by your Grace, but I should not say the lower class of artisans were the only people that come before the court for separation orders—not from my experience in Bristol.

12,704. No, I say casual labourer?—The casual labourer does not come so much before the court in Bristol, I should say, as the artisan who is earning more wages. I am a justice of the peace for Bristol, and I sometimes go and sit there in the odd days that the Chairman has mentioned when I am not sitting in my county court, and my impression certainly would be that there is an inclination for there to be more separation amongst the working men who are rather better to do than amongst the casual labourers and dock labourers in Bristol who have very very little. Of course, as your Grace knows, so much of the conjugal difference arises from drink. The casual labourer in Bristol does not earn more than about 18s. a week, and he has not much to get drunk with. The artisan who may earn a very much better wage has more to drink with if unfortunately he desires to do so.

12,705. But you would agree that on the whole the fidelity to the conjugal tie amongst the better sort of working people is very marked?—Quite.

12,706. You would agree that that is because of some principle as regards marriage?—Well, I think you know that the reasons I gave were reasons that really do explain why there is less infidelity amongst the working classes. They live together more, they are more under each others' eyes.

12,707. What I want to get at is this. You would also agree, would you not, that one reason of this fact, which I think is constantly before us and is very clear—that the respectable working classes are very faithful—is that they have principles with regard to marriage, that it is, and is meant to be, for better and for worse, and that they must put up with jars and difficulties and strains?—I have no doubt that is so in many cases.

12,708. Then is it not of great importance that in every possible way the influence of that principle amongst this class should be maintained?—I agree, but I do not think it would be weakened by the fact that Parliament gives them a chance of sometimes getting rid of a partner whose presence was intolerable.

12,709. No, but on the other hand you said it had been your experience in Bristol that when it seemed possible to carry through a particular divorce case on easy terms various other divorce cases were at once suggested?—I am quite sure, my Lord, that if divorce were cheapened there would be a certain number of cases that are, so to speak, waiting in the hope of a remedy being given them that would come forward.

12,710. But would it not also happen that a large number of persons who at present look upon divorce as something which they do not contemplate in their class of life would immediately contemplate it as a possibility, and that therefore that admitted stronghold and principle of the marriage tie being binding would be weakened?—It is possible some persons may

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have their views of the tie weakened. I do not think the conscientious people would, but the people who would come for divorce would be the people who would otherwise be driven into the immorality that I spoke of in the course of my notes.

12,711. You would agree, would you not, with what many who know the working classes pretty well feel, that hitherto they have regarded divorce as a matter that concerns the wealthier and more luxurious and more dissolute class of society, and does not come within the range of their social lives; but if it becomes a frequent event in the county court at their doors that notion would be dissipated?—Your Grace, I do not think that would be the result. It might be so in certain—if I may say so—weak-minded cases, but I do not think that the respectable working man who took the view your Grace has suggested of the contract of marriage would have that lessened or made less binding on him because there was a way of getting a divorce like that.

12,712. But it would affect the public opinion of the whole class though not of the individual?—It is conceivable, but I do not think it would.

12,713. Then you would agree, though you think divorce is an evil and yet are in favour of making it speedier and cheaper, which sounds a little paradoxical—but you would agree it should not be made too cheap?—No, it ought not to be made free, if that is what your Grace means.

12,714. I should like to know what you mean by “sufficiently cheap”?—Well, 5*l.* to 10*l.*

12,715. You said 5*l.* to 10*l.* is almost prohibitive to the class in your mind?—Not entirely prohibitive, but it would be difficult to get the money, and that is one of the reasons that would stop them from coming.

12,716. Do you know what the present cost of a bicycle is?—It depends entirely on the make.

12,717. About 3*l.* or 5*l.*?—You can get a very good bicycle for about 5*l.*

12,718. A large number of the working class of the kind you are speaking of habitually possess bicycles?—I am afraid, your Grace, they are very often got on credit.

12,719. But they find no difficulty in procuring bicycles, on credit or not?—No, your Grace, because there the bicycle vendor has the chance of hunting the man down eventually by a judgment summons.

12,720. But you do not hesitate at the conclusion that a man should be able to get a divorce from his wife for the same cost for which he could purchase a bicycle?—Your Grace, I do not think that the two things are really comparable.

12,721. I think very incomparable. I quite agree. Then with regard to the advantage of the county court being near; of course, assuming it has jurisdiction, is not there a certain danger in the very propinquity of the county court that the matter, being a matter that concerns the particular district, a large number of friends and neighbours would be acquainted with the trial of the case, which would be likely to prejudice the cause of justice?—I do not know; I think it is always desirable that every court should be open except in cases where the details are such that it is desirable to keep people out; but I do not see why any harm would be done by allowing the public to attend.

12,722. Do you think it has been a good thing for public morals generally that the Divorce Court in London has been so largely attended?—Well, I think it would have been better for the people to have stopped away, your Grace.

12,723. Then would not it be bad for the public generally if attendance at divorce courts were put within the reach of everybody in country towns?—There again it comes to the question of trying *in camera*. There are the two matters, the publication of details and the question of excluding people. I do not think it is good for any man or woman to listen to the details of a divorce case or to read them.

12,724. *Primâ facie*, it would not be a good thing to extend the opportunity of listening to such cases all over the country?—As I say, you have to choose between two evils; one, the occlusion of the court from the public during the administration of justice, and the

other the evil that may result from hearing something wrong.

12,725. Then there has been evidence that in the large majority of cases in separation orders the parties come together again?—When they are young.

12,726. You would agree from your experience that matrimonial disputes are sometimes acute in the early stage, but if there is time they would be adjusted?—That is the way they adjust themselves—after a separation order is made.

12,727. Then would there not be a danger, when the people are young and their differences acute, of persons being rather eager to bring themselves within the grounds of divorce?—It all depends on how far you extend the grounds. I would only give divorce for adultery or desertion for four years.

12,728. Well, let us take desertion. That you lay down as coming within your guiding principle, which is that divorce should only be allowed when there is a distinct repudiation of the marriage contract?—Yes.

12,729. But is it not possible, that allowing desertion as a ground for divorce might be taken as a means by which persons would repudiate it?—I am afraid I do not follow your Grace's question.

12,730. If a person knows he has only to leave his wife for four years and say nothing about it, is not there a temptation on his part, if he wishes to get rid of his wife, to use that as a means of repudiating the contract?—I think that possibly may be so, but if he does he repudiates the contract and I think his wife ought to have her remedy.

12,731. Although he and she may quite (nobody would know) agree that this should be a means by which they mutually want a divorce?—Then the principle of collusion comes in, which would be applicable in every divorce case. No divorce can ever be worked satisfactorily unless the principle of collusion, with which the chairman is so familiar, were applicable to the case.

12,732. But in insanity might not it be argued that that was not in any way due—or presumably in many cases would not be—to the fault of the party; but what is called in legal language the act of God?—That is the view I express. I would not give divorce for insanity.

12,733. But according to you, might not it be said there is more reason for being set free from a union that is impossible through no fault of their own than that they should be able to get free from a union the dissolution of which they arranged for themselves?—If you once assume that it is possible for the parties to arrange for a divorce and get it, then you are drifting into all the difficulties that arise in America, where you can get it for anything.

12,734. (*Lady Frances Balfour*.) I think you said you were in favour of making it equal as between men and women?—That is so, Lady Frances.

12,735. And you would give it for desertion?—Yes.

12,736. Do you think those classes who have not money to come to the Divorce Court have a higher view of the marriage contract than those classes who have enough money to come? It has been suggested that the classes who are not very rich have a higher view of the marriage contract than those better off. Is that your view?—Well, Lady Frances, I think the matter is really solved by the question of temptation. There is very much more temptation to a man who has money and more or less leisure than there is to the artisan who has very little money and very little leisure, and has to work very hard. It may be, as his Grace says, that a higher view is taken of the contract of matrimony amongst the artisan classes, but I think the incidence of adultery is referable really to the absence of temptation in one class more than in the other.

12,737. There are greater temptations in the poorer class; if, for instance, the wife is absent?—The wife is so seldom absent in the poorer class. People do not go to country houses for week-ends amongst the poorer classes.

12,738. But she may desert her husband?—Oh, yes, if she deserts him the question of divorce comes in naturally.

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12,739. Then it seems not unnatural that the man should cohabit with the housekeeper. So the temptation is of a different order?—Yes, I agree.

12,740. Then with regard to the bicycle. That sum of money represents a luxury?—Well, something in the nature of luxury; or perhaps it enables the man to get to his work.

12,741. If a woman has misbehaved against her husband by infidelity or desertion she has broken the marriage contract?—Yes.

12,742. Then does not it seem just that that sum of money that buys the bicycle might also be applied in the act of getting justice such as the upper classes can get who have the money?—Yes, that is the answer I should have made to his Grace if I had thought of it.

12,743. So the two things are incomparable?—I respectfully agree once more.

12,744. (*Lord Guthrie.*) You said you regarded divorce as an evil. I suppose you also regard judicial separation as an evil?—A much worse one, my Lord.

12,745. You think, as we all think, that the existence of the Divorce Court, like the existence of the Criminal Court, is a stain on our civilisation?—Yes.

12,746. But an unfortunate necessity?—Yes, we cannot get on without it.

12,747. With regard to your statement of the causes that you think would justify divorce; you put it something that involves repudiation of the marriage contract. Strictly, that would only apply to desertion, would it not?—Or adultery, my Lord.

12,748. Desertion more than adultery. In adultery you may have an adulterous husband fond of his wife and desirous to retain the matrimonial relations. In desertion he abandons it entirely—repudiates it?—I agree, my Lord, but it seems to me that a man who commits adultery must realise that the thing he is doing is a repudiation of the contract of matrimony even though he may continue to be fond of his wife.

12,749. That is on the view that the two essential elements of the contract are fidelity and permanence?—Yes.

12,750. And your view would cover both?—Yes.

12,751. And no others?—And no others. That is my idea.

12,752. If, on the other hand, the definition is only consistent with the reasonable continuation of the marriage relations you would have to go further?—Yes.

12,753. Into cruelty and habitual drunkenness?—Yes; habitual drunkenness, insanity and penal servitude.

12,754. I quite see the difference. What do you say of the quotation given by the Commissioners in 1857 from Shakespeare; "Such a deed as from the body of the contract plucks the very soul"?—I should have thought, my Lord, it would agree rather with my view.

12,755. Now tell me this; with regard to the time that you say a county court judge would have. We have you sitting in court 172 days?—Yes.

12,756. How many of these do you think would be full days?—Most of them.

12,757. Then we add Sundays, 52?—And Saturdays.

12,758. I am leaving them out just now because that is your own choice?—Yes.

12,759. Then we next add holidays. Can you say how many statutory holidays you have?—I am not bound to sit in September at all by Act of Parliament.

12,760. Four weeks?—Well, I take six, as a matter of fact.

12,761. But add your other holidays, Christmas, and so on; what is the total? As a county court judge in England, what would you say is the total holidays to which a county court judge in England is entitled, apart from Saturdays and Sundays?—I am afraid I could not say without adding it up. I get six weeks in the Long Vacation; I get about a fortnight at Christmas and a week at Whitsuntide, and something like a week at Easter.

12,762. How many weeks is that?—That is 10 weeks, my Lord.

12,763. That is 70 days. That is 294 days to be deducted from the 365, taking your court days, your Sundays, and your holidays?—And the Saturdays.

12,764. No, that is your own doing. Now 365 less 294, that leaves 71 days apart from your Saturdays, all together?—Yes, if you take out the Saturdays there would be about 20 days not accounted for.

12,765. Yes. Now in how many cases in the year do you have to consider and write a judgment—roughly?—Well, my Lord, I am afraid I am very remiss in writing judgments; I write very few indeed. I do not suppose I write more than four or five judgments a year.

12,766. Then do you decide the whole of the other cases on the spot?—Yes; I may be very reckless; I am afraid I do.

12,767. Then we might say that a week would be sufficient for writing judgments?—Oh, clearly, my Lord.

12,768. Then apart from your Saturdays you have a good many days over?—Oh, yes; I have not said I could not do more work.

12,769. (*Judge Tindal Atkinson.*) Just one or two questions. You had considerable experience at the Bar at the assizes?—Yes, I had in my time.

12,770. What do you say with reference to the assizes taking divorce cases instead of the county courts?—Perfectly hopeless.

12,771. That is the experience which you gained on circuit?—That is my experience.

12,772. There is another point. I should like to ask you about, namely, recrimination; I do not know whether you gave evidence as to that. That is, supposing a wife sued her husband for divorce and the husband set up the adultery of the wife; do you think that should be the answer to the suit or that there should be a divorce notwithstanding, where both parties are equally guilty?—My own inclination would be that there should be a divorce when both parties are equally guilty. It seems to me the inconvenience of the other course is so very great.

12,773. With reference to juries, would you advocate a jury being summoned, if the parties desired it, in the county court?—I should rather try a case without a jury myself.

12,774. But would you give the parties the right of having a jury if they chose?—Well, it is such an inherent right to an Englishman to have a jury if he chooses that I do not think we should take it away.

12,775. Then it is said that the county court jurors are a very inferior race. Is that your experience?—No, it is not. In Bristol I get very good jurors indeed. I get pretty nearly as good jurors as special jurors on Assize. I do not know who selects them, some official in the county court, but the class of jurors who sit in my court are excellent.

12,776. That is my experience. Very strong objection is made to the county courts having jurisdiction because dissolution affects status. Does that have any effect on your mind?—No, I do not think the issues are more difficult because status is affected.

12,777. Then with reference to the easy access which the suitors get to the county court judge. Is it of importance that there should be that access in case of custody of children?—I think so. I think a county court judge, if divorce jurisdiction were granted to the county court, would be able to do a great deal of good with regard to the custody of children and arrangements of that sort which could not be done in London.

12,778. If the parties had to come to London with regard to the custody of children, that involves an insuperable expense?—Quite insuperable expense.

12,779. (*Sir Lewis Dibdin.*) You told Judge Atkinson you are in favour of the abolition of recrimination?—Well, I am in favour of giving divorce where both parties are guilty on the ground of convenience. It seems so lamentable while there is sin on both sides that they should still remain tied by the chain of matrimony.

12,780. I was interested by what you said about principle. You object to collusion and to divorce being arranged by collusion, that is to say, by both parties agreeing to repudiate the contract; but if they go further and actually commit adultery, then you

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think they ought to have a divorce?—Sir Lewis, I do not pretend to be logical in the matter, but the inconvenience of the other is so great.

12,781. That is what you have been, and I have listened with admiration; but your view on recrimination seems out of focus with the rest?—I agree it is, but it seems to me there is such a strong motive there of convenience.

12,782. Now on repudiation, I quite gather your view that there must be something by which one side repudiates the contract, and therefore it ought to be dissolved for the benefit of the other?—It is something inconsistent with the contract.

12,783. I was going to ask you about that? You have taken as the only instance desertion for four years?—I took that because the Scotch principle seemed to me to be the right one.

12,784. Are not you forced to go further? Take cruelty. Take the husband and wife living together; no collusion and no desertion, but the husband makes the life of the wife absolutely intolerable by cruelty. Is not that a repudiation of the contract, which is not simply that the two people should live under the same roof, but that they should live as husband and wife?—Well, Sir Lewis, it seems to me there is a great deal to be said for your view; but at the same time a man does take his wife, or a wife her husband, for better for worse. If there is such cruelty as amounts to assault she has her remedy by going to the magistrate.

12,785. But that is not an answer to the question we are on of the extension of grounds for divorce?—No; the difficulty is of course to say where you are to draw the line of cruelty as a ground for divorce. Cruelty varies so enormously.

12,786. You realise then that when launching on enlarging the grounds of divorce for any repudiation of the contract, you find it difficult to stop?—I have not found it difficult to stop till now, because I do not think cruelty is necessarily a repudiation of the contract, though it may be.

12,787. Well, if some cruelty is, is that to be a ground for divorce?—I should say no, but I do not see why I should say so. As you say, when one starts getting beyond adultery you have a great difficulty in drawing the line. I quite appreciate that.

12,788. May I suggest to you that sounds like a reason for not starting?—It may be so.

12,789. (Chairman.) I want to ask you this. The line has been suggested as being drawn where the life has become impossible between the two parties?—Yes.

12,790. It might be difficult to say where that is, but that is a clear line, is it not?—That is certainly a clear line when it is impossible by reason of some conduct or other for the parties to remain in a position to carry out the contract of matrimony.

12,791. I was going to put that to you. Sir Lewis has been kind enough to suggest the point about cruelty. Let me put the case where it is unsafe for a woman to remain in the same house with a man (I have had cases myself in my court of that character). Would you be prepared to go so far as to say that that would come within the category of a breach of the contract to love and cherish?—Yes, I think, my Lord, probably that view is the right one; that when there is such cruelty that the wife cannot safely live with the husband that ought to be treated as the husband's repudiation of the contract of matrimony. I think to that extent perhaps my evidence should be altered by adding cruelty of that nature.

12,792. At any rate it is a matter deserving consideration. There is one other point I want to ask you. It is based upon some passage in your evidence. It is upon this point, which is a very important one, as to the probability of a detrimental effect being produced on the public opinion of the lower classes by reason of the increased facilities for the hearing of their suits. You have said, I think, that you do not think it would necessarily follow?—No, I do not.

12,793. Do you find in fact (I think I did ask you, but I am not sure) that the difficulty that exists at present of the financial impossibility of bringing their cases does lead to irregular unions?—Certainly; there is no doubt about that, my Lord. Of that I am quite sure. It is one of the few matters as to which I can speak as a matter of fact from what I have been told by those who work amongst the poor, and not as a matter of my own opinion.

12,794. So that that is departing from the view that the contract or relationship is such as to be a complete tie prior to any suit being in fact instituted. The misconduct occurs at present, although they know they cannot get a divorce?—Yes, that is so.

12,795. (The Archbishop of York.) Might I ask a question. You were good enough, judge, to say that you accepted an answer provided for you by Lady Frances as your own?—Yes.

12,796. If you had given it me, then I think I should have asked you one or two more questions about it. The point which you accepted from her was that 5*l.* was not too large a sum, even though it might be able to buy a bicycle, to buy justice. But justice is justice between two parties, and what makes costs in all proceedings is the necessity of having the case tried in such a way as will really secure justice on a high standard. Naturally we should like justice to be obtained for nothing if that could be done. But is it, in your judgment, a hardship that a man should be required to pay, in order to see that justice is done between himself and his wife in such a matter, at a sum that would obtain a bicycle?—I do not think it is a hardship. It is the sum at which I would put the remedy which is now altogether outside his reach.

12,797. (Sir Lewis Dibden.) May I put a question arising out of the answer you gave to Lord Gorell, when you rather altered your view as to cruelty?—I only submitted to the superior logic of the Chairman.

12,798. Had you given the same answer to me I should have put another case. What do you say to a case where conjugal relations are absolutely refused between husband and wife who are living together, and one side or the other absolutely refuses conjugal relations. There is a repudiation of what is the very kernel of the marriage contract. Is that a ground for divorce?—Well, Sir Lewis, I have no experience of any such case, and I should not suppose they are at all frequent. It is a purely hypothetical case which, as far as I know, does not frequently arise.

12,799. No, but take it that there are such cases?—I should think very likely, logically, it would follow from the view I was submitting to the Commission, that that would be a repudiation of the contract of marriage.

12,800. And that divorce should be allowed for it?—Yes.

(Chairman.) I think on behalf of the Commissioners I ought to thank you very sincerely for your very valuable contribution.

His Honour Judge THOMAS COLPITTS GRANGER called and examined.

12,801. (Chairman.) You are the county court judge for the district of Cornwall?—The whole of Cornwall.

12,802. Have you also sat for 19 years as a magistrate?—Yes.

12,803. Joint Chairman of Quarter Sessions. Where are they held; at Bodmin?—Yes.

12,804. In your double capacity of county court judge and magistrate have you come to any conclusions as to placing the possibility of divorce suits within

reach of the poorer classes?—Yes, for years I have been of opinion that it ought to be placed within the reach of the poorer classes, from cases that have come before me and from cases I have heard of.

12,805. Are you able to tell us from Cornwall at what you estimate the cost of an undefended case?—The average cost is 60*l.*, but as often as not it is more.

12,806. Where do you get that from?—I take it from costs, taxed in the High Court, of cases. The least amount I have heard of is 50*l.*

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12,807. Of course you are a long distance from London?—Yes, it is a long distance.

12,808. Up to what extent would you grant this jurisdiction?—I should grant it to 200l. a year at least.

12,809. You think over that people might afford to come?—I think so, but it might be extended even beyond that, because it is not only a question of the working classes but it is a question of the small poor clerks and small farmers and the very small shopkeepers, who are absolutely unable at present to come.

12,810. Now we have had several alternatives placed before us. I should like you to state, assuming local jurisdiction was given, what would your experience lead you to think would be the proper tribunal?—Well, I am afraid it must be the county courts. The alternatives suggested seem to me impracticable. For instance, a trial before the Divorce Court judge sent specially would be very little cheaper than coming to town in my opinion. Then at the assizes it would be dearer I should say, when you come to think of the waiting and one thing and another. There would have to be an agent instructed in London, and counsel's fees.

12,811. Have you no local High Court district registry?—Yes, there is a district registry at Truro. With regard to a suggestion (I think it was Mr. Justice Bargrave Deane's) that the evidence should be taken in the county court and then tried in London, that seems to me impracticable, because I think these cases are amongst the cases where the judge should see the witnesses. Then, again, the costs would be quite as great. After the evidence is taken you would have to go to London and employ an agent in London, and brief counsel for the trial.

12,812. And provide copies of the evidence?—Yes, and probably in the end the judge would say: "I cannot try this case without seeing such and such witnesses."

12,813. At any rate in contested cases it would be a very serious matter?—Very serious.

12,814. That exhausts briefly the two points of the High Court exercising jurisdiction either the one way or the other. Will you then turn your attention to what you have to say as to the magistrates and county courts?—Well, dealing with the objection to the county courts first. It is said that it would set up 50 different standards in the country; but the answer to that is that the legislature does already, by giving magistrates jurisdiction in separation orders, set up hundreds of standards in the country, and I do not see that 50 standards by trained legal men would be any worse than the standard of the magistrates. Then I think, as a matter of fact, county court judges are more able to apply the right standard because they know the people and their habits and customs, and ways of living. Take, for example, cruelty. What would be cruelty in one class would not be in another. The standard must differ according to the habits of the people. Some people in the north are very rough while others are not. Then again as to collusion. In my opinion there would be much less chance of successful collusion before a county court judge than if it came to the High Court. What happens under the present régime in undefended cases is that the King's Proctor writes down to a solicitor in the part of the country from which the case comes and says, "Make enquiries in this case." If the King's Proctor appointed the registrar of the court where the divorce is heard as his agent he would have an agent far more capable of finding out collusion. In view of the registrar and the officers of the court practically in the country districts (it must be remembered I am speaking of a country district where, more or less, everybody is known) it would be very difficult indeed to have collusion. But I think as a matter of fact there would be very little collusion whatever. I do not think the working classes have the time or the money to indulge in the finesse of adultery.

12,815. You think they are genuine cases?—Yes; in the enquiries I have made they are plain-sailing and genuine cases.

12,816. Have you, through your enquiries, ascertained that there are people who want a decree and ought to have it, but cannot because of the present state of things?—Yes, there are scores of them, and it is most unjust. The cases I hope to refer the Commission to, some of which I have actually seen. I have had them to see me at my various courts to see what their view was and how they approached it.

12,817. Would it be convenient to give them now?—Yes. Now the first case, I think, is one of the cases that some years ago drew my attention to the injustice of the whole thing. This man was a day labourer earning 18s. or 20s. a week. In 1900 his wife went wrong with a lodger; there is no sort of doubt about it—it was as clear as possible. He went to a solicitor, was informed that a divorce would cost him between 50l. and 60l. He broke up his home, put his children out, went to America, and worked for five years till he had saved enough to get a divorce; and he came back and got his divorce, and the aggregate cost was 72l., but he was a lucky man because the taxed costs were 60l., and he brought the co-respondent before me on judgment summons, and I made an order intimating that I should insist on its being kept up; and the co-respondent's father paid him 30l. and he settled for that, so he escaped with 42l.

12,818. After working for five years?—After working for five years and breaking up his home. I saw that man, and he certainly had a strong sense of injustice that he should have had to break up his home and go out and work like that for five years. I am glad to say he is now happily married.

12,819. Then the next case?—Then the next case was a day labourer earning 18s. a week. The wife went wrong with the husband's first cousin in 1893 when the husband was 32. He went to a solicitor and was informed what the cost was and he never made any attempt. He is living in lodgings; his whole life is ruined, and his wife is living in the next village, simply keeping a boarding-house, and he has had to live in lodgings, and he is now a man of nearly 50. I saw that man and he certainly felt he was most unjustly treated; but it is wonderful how patient they are; they seem to have wonderful patience.

12,820. Is it your view that neither in their own interests nor in the interests of the State is it desirable that things should be left like that?—It is, strongly.

12,821. Then case 3?—That was a case of a quarryman at 18s. a week. He had to work away, coming home at week-ends. He spoke to his wife several times about a lodger, hearing reports, and finally the wife and lodger left, and they took not only his children but his furniture. Of course he could have got that back, but he does not seem to have had the pluck to do that; and they have his furniture and children and are living as man and wife in one of the villages in Cornwall.

12,822. (*Sir Lewis Dibdin.*) What was the date of that case?—I have not the date, but it was quite recently. He was not a very capable man but he felt it very strongly; and going away she informed him that none of his children were his, by way of a parting shot.

12,823. (*Chairman.*) 18s. a week you say?—Yes.

12,824. It would be found impossible to pay for a divorce out of that?—Impossible; and he was not the class of man who would go out and work abroad for five years and get the money. Then the next one is a gardener who earned 18s. or 20s. a week. He described how he suspected his wife for some time. It was not a lodger in the house but a man across the way. He found he could not take any proceedings, and the wife went away with the man and is living with him as husband and wife, and the husband is left to do the best he can.

12,825. (*Lord Guthrie.*) Any children?—No, there are no children in that case.

12,826. (*Sir Lewis Dibdin.*) What is the date of that?—That is a recent case too. Then case 5. The parties there were married nine years ago. Six years ago the husband deserted his wife, taking three children, and went to South Africa. He never sent any money, and the wife worked hard to keep the

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children left; and 18 months ago the wife began to live with the lodger, and the husband brought an action for divorce. If she had known that her expenses had to be paid she might have entered appearance, but she did not know it. That is a thing which, if jurisdiction were given to the county courts, she would know.

12,827. (*Chairman.*) But he was in fault to begin with?—Yes, and I imagine he could not have got a divorce. That is so. He deserted her without giving her any support; clearly with the intention of deserting her.

12,828. That would be a case in which, if desertion were a ground of divorce, she might have got rid of the thing at an earlier stage?—Yes, she might. Then in case 6—they were married in 1904 and lived together for four months, when the husband went to South Africa. He sent sufficient money to keep the house and her and to place 70*l.* in the bank. In 1907 he stopped supplies in consequence of suspicions, and in 1908 the wife had a child, and the husband returned and started a divorce and got his decree. I am only quoting that to show that that man had 70*l.* in the bank and a houseful of furniture. After he got his decree his furniture was all sold and all his savings had gone.

12,829. What was the cost?—66*l.* 1*l.* 2*d.*, taxed costs.

12,830. Then there are some other costs?—Then there are the costs as between solicitor and client, 8*l.* 12*s.* 2*d.*, and then his own costs in London. So that from being a well-off man in that rank of life he practically had to start again.

12,831. Then case 7?—Case 7—married in 1895—lived together three years—two children—provided well for wife and children—went to Lancashire to seek work—was away 10 months—wife had a child which he alleged was not his but could not afford proceedings—went to America—got naturalised and got his divorce there; and he has become a naturalised American.

12,832. (*The Archbishop of York.*) You say he alleges the child was not his. Is there any proof?—What happened was this. The American courts do not grant divorce without proper proof, and there was a commission out there to take the evidence, and it was on that commission that they gave the decree, so I imagine they were satisfied. It seems to be a common error that in America anybody can get a divorce by saying "I want a divorce," but that is not so. But the point is that that man was driven to become a naturalised American because of the expense of divorce in this country. Then case 8. In this case I cannot put it forward as a case where the wife wanted a divorce, because she was too fond of the husband, and she did not; but I want to put it before the Commission to show how they are handicapped. In this case the man married a girl in the morning and went to South Africa in the evening, not having cohabited.

12,833. (*Chairman.*) Is that a soldier case?—No, a miner's case.

12,834. (*Sir Lewis Dibdin.*) What is the date?—About 12 years ago. He sent her money every month. She happened to get a tumour and a friend in the village wrote and said she was in the family way. The man stopped giving her money and she went to a solicitor to bring an action. As the county court has no jurisdiction in libel or slander she could not bring an action, and the next best thing the solicitor did was to get a certificate of two doctors that she was a *virgo intacta* and sent it out to him. However, he believed the slanderer's statement and she was deserted from that time. In any case she could not bring an action for divorce because she had not a halfpenny.

12,835. You mean that would be a desertion case?—I presume, no cohabitation having taken place, she would be entitled to have the marriage annulled.

12,836. Oh no?—She would not?

12,837. No. Assuming he improperly stopped away and would have nothing more to do with her, it might be turned into a case of desertion from that date possibly?—Well, it was a very hard case on her in two ways, because if she had been able to bring

an action for libel in the county court she could have established her character, but as it was she disappeared. I could not trace her though I tried.

12,838. Then you were dealing with objections being raised to the county court, and there was one you had not reached about the objection made on the ground of perjury in the county court?—Yes, there was an objection raised that there was such an atmosphere of perjury about the county court, and raised, curiously enough, by a clerk to magistrates. My impression is that the police courts cannot afford to throw stones at the county courts in that regard; nor, indeed, can the Divorce Court in London. That your Lordship will know better than I do. Then I go on to say that, generally speaking, there is a high standard of matrimonial fidelity in Cornwall, but there are two causes that very much lower the standard. The first is that so many Cornishmen go abroad and stay away for years. It is quite a common thing for them to stay away for 20 years without ever returning, and very often after only being married a few months. In the majority of cases they send money home every month and write the most affectionate and interested letters. They are an extraordinary people. Then the second reason is the practice which prevails of taking in lodgers. In order to eke out their scanty wages (because the wages are very low in Cornwall) they constantly take in lodgers, and I am afraid when wives have husbands in South Africa they take them in where there is no necessity at all for it; and those are the two great causes of matrimonial infidelity. Then, as a matter of fact, when a working man loses his wife he is bound to marry again and he cannot afford to wait. If he employs a woman to look after his children it costs him 5*s.* 6*d.* a week, and that is a considerable sum out of 18*s.* or 20*s.* If he has a woman to live in his house, the houses are of such a poor class that it very often ends—and must end—in the man cohabiting with the woman, by which means he gives up paying 5*s.* 6*d.* a week, and there he is. So in that way I think it is a cause of a great source of immorality, and if there were an easy means of divorce I think the wife would behave very differently.

12,839. You have not quite exhausted the earlier part of your proof, which deals with the question of the county courts and the magistrates respectively. If you gave jurisdiction would you give it to the county courts or the magistrates?—Oh, to the county courts.

12,840. What is your objection to the magistrates?—Well, the magistrates have no staff; that is the chief objection. They have no staff to deal with the work in the first place.

12,841. Not even the stipendiaries?—No, I do not say stipendiaries. I say the stipendiaries might very well do it. I am dealing now entirely with my own country districts which have no stipendiaries. Then there are other objections to the magistrates; it is very difficult for them to avoid being approached.

12,842. The laymen?—The laymen. I find it even myself, living in my district—the way in which people will come up and ask to see me and try to get my opinion of their case. It is constant. They are a very kindly race the Cornish, and it is very difficult for magistrates to avoid it; not that they have any corrupt feeling about it, but just a kindly feeling that they will listen to a man's story and take it up if possible, and it is more so lately.

12,843. What is the meaning of that?—Well, the magistrates now appointed are—

12,844. I see. Now with your experience of the county court, and I suppose with some knowledge of what the divorce practice is or might be, what do you think an ordinary simple case—undefended—might be dealt with for in the county court?—I do not think it should be made too cheap, and I think if an undefended case cost 10*l.* it would meet the thing.

12,845. You go on to deal with the kind of procedure which might be used?—Yes, I think there should be a simple petition setting out the facts personally served by the ordinary officer of the court. As a rule, of course we have no other pleading than

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the statement of claim, but in divorce cases there might be a simple answer in addition.

12,846. Then there comes the point about centralization in your district?—I think personally I should be in favour of giving jurisdiction to every court, but that I know is not the trend of the times; the trend of the times is to have all the important cases at certain centres, so I will not pursue that. For the increased jurisdiction under the Extended Jurisdiction Act I have three centres, Truro, Bodmin and Launceston, and I think those three centres would do for divorce jurisdiction.

12,847. Might I suggest, if it were permissible to file a petition or claim at any county court it might still be heard at the centre?—Oh yes, all the proceedings could begin at the county court where the parties resided.

12,848. As to that, where is the appearance?—The appearance would be in the county court where the person resided.

12,849. Where the claim is started?—Yes. When the record was completed it is then sent on to the court of trial.

12,850. Would that be a practical matter in case this jurisdiction was conferred so that the proceedings could be in any locality but the hearing actually taking place at the centre?—Yes, I do not see any difficulty. I can only say that all my registrars deal with the workmen's compensation cases, which, as your Lordship knows, are extremely intricate, and anything of this sort would be—

12,851. Are they only heard at the central places?—No, at every court, and every registrar is conversant with them. There will be nothing in divorce proceedings which could cause them any difficulty.

12,852. You have already dealt with those specific cases. I should like to ask you on the jury question. If jurisdiction was given, what do you say about that?—I should say, if possible no jury. There is too much sympathy about them and they have not the remotest notion that the evidence in court is what they ought to decide the case on. If they could get some sort of notion of that kind it would be an enormous help. Of course you know Cornish juries, even at the High Court at Assizes, proverbially take their own way. The Cornish have very marked peculiarities.

12,853. Then your view would be the court would have an appeal to the Divorce Division on law and fact?—Certainly; I would have an appeal on both.

12,854. Now at the end of your third page, as I have it, you sum up your evidence on these points. Perhaps you will state it in your own way?—Yes. "To sum up my evidence, there can be no doubt that there is not only a serious grievance to the working classes, clerks, small farmers and tradesmen, but it brings about immorality and encourages disregard of the marriage tie." Because in many cases where the parties—say the wife goes wrong, or the husband, they separate, the husband taking so many children and the wife so many, and they form other connections.

12,855. Is that your personal experience?—I cannot say personal, but it is vouched for by people whom I have absolute faith in.

12,856. Would this view of giving jurisdiction locally act as a deterrent on immorality?—I think it would, because however badly a woman behaves she has a great appreciation of her marriage lines, and she does not like to be deprived of them.

12,857. I was referring to something you observe at the top of the next page. I do not quite follow it?—"The present system operates harshly on both sexes"?

12,858. Yes?—Well, because I do not think the women have the smallest idea about the procedure; they cannot defend themselves, you see.

12,859. Would you refer to the case that you wish to bring before the Commission that you refer to there?—Oh yes, a defended case. I was wrong in one thing. I say that the costs ran up to 191l. 6s. 7d., from which must be deducted the cost of the special examination of the petitioner. But there is another 20l. to come off.

12,860. Will you state the case first?—Yes. Well, in that case the husband was abroad and came home

and found his wife had given birth to a child. That was rather a curious case in this way, that the solicitor employed a solicitor in a part of the country some distance from where he lived to serve the respondent with the petition, and it was practically an undefended case with regard to the woman, but it was doubtful whether the co-respondent was really the man; the proof was difficult. It turned out that it was defended by the solicitor whom the Cornish solicitor employed to serve the respondent. The Cornish solicitor did not say anything, but ever after that he sent his own clerk to serve petitions. What happened in that case was, it came up for trial, and the petitioner had to pay for his wife's costs—18l. odd; he had to pay that into court. He had only quite a limited amount of money, and as the case dragged on he found he had not enough money to go on, and he wished to get back to South Africa to make some more to pay it. That is the reason why they had to have a special examination of the petitioner. Now that special examination cost 16l., and in the county court I do not think I am wrong in saying it would cost—well, I suppose the registrar would get a small fee—it would cost about 30s. or 2l.

12,861. Is the point you make that a case in which there was really no defence ran up a bill of about 190l. against the petitioner?—Yes. And that I think speaks very well for the solicitors in the west—that there are not more defended cases when they know that the husband has to pay. Some mention was made that there would be collusive suits brought because the solicitor would not have the same responsible feeling that the Bar has. I do not think so at all. In that case the petitioner has to lodge 20l. for the costs of the trial. It went over the second day. At the end of the first day the solicitors for the wife and the co-respondent said, "If you will let us have that 20l. we will give up the defence." Of course it paid them, because if he had gone over the next day there would not have been much of the 20l. left.

12,862. Then that was a case where there was really no defence and it cost the man nearly 200l.?—Yes, that is what it comes to, and it seems to me too much. In that case I have a letter of the London agent in which he says, "I am marking the counsel's brief in accordance with your client's position," so in that way the wind was tempered; but there was still a considerable amount left.

12,863. The next point of your evidence deals with some misapprehension prevailing about this subject?—I have come across so many people who thought that the proposal was that we should give divorces at our own free will and pleasure, and that that was the proposal.

12,864. Whose proposal?—It was the idea that that was what the Commission was for, to give us a free hand, and I could not imagine such a thing. I said at once that we should be bound down by the same rules as the High Court naturally.

12,865. You mean a sort of impression got about in Cornwall that if there was a reform it was to give an absolute free hand?—Yes, perfectly ludicrous.

12,866. And that was entirely erroneous, you agree?—Yes, the last thing that the county court judges would wish.

12,867. What was the origin of that?—I think the evidence of Mr. Barnard, who says that if jurisdiction was given to the county court judges it would be the same as being in America. What he meant by it I cannot make out, but I think that is the origin of it.

12,868. With regard to the separation orders; have you as a magistrate to deal with them?—Yes, I have dealt with a considerable quantity.

12,869. I should like to know your view about them. Do you think it desirable that they should be made permanent?—No, I am very much in favour of short terms, and I am very much in favour of conciliation. I have often thought when I was on the bench, sitting with five or six or seven other magistrates, how I should like to have had the couple before me in my private room; but when you have such a large number you cannot do it. As I have said here, one of our most important duties is settling cases that ought

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not to be allowed to come into court. I think I have stated that cases between husbands and wives, of which I get a good number, of people who have entered into agreements to part, and questions of molestation, and non-payment of the amount, and so on, come up, and also cases where Church and Dissent come against each other. I have those sort of cases.

12,870. But with regard to the limit of time: have you thought of how that would work out?—Well, I think they would have to come again at the end of the time and be seen by the judge; seen first of all separately and then together, and see whether there was any chance of their coming together, and if there was any chance give another three months.

12,871. Supposing it was a case in which there was no chance, and you were satisfied on the second hearing that life had become impossible?—Well, I think in a great many of these cases it would end (if there was easy access to the courts) in a divorce, and much better. I think that lifelong separation is a very bad thing, although I am bound to say, as I say in my evidence, that it has not worked badly in Cornwall.

12,872. Is that because they do rejoin each other a great deal, or what?—No; I got an exhaustive report from the police giving the numbers of separation orders, and what they thought about it, and the reason given in the case of the wives is that if they go wrong they lose their maintenance, and that is the reason they give.

12,873. Then in the case of husbands?—It is a curious thing that with regard to the husbands the police think that on the whole they behave very well, but I have a paper here written by a solicitor who is one of the greatest friends of the mining population, and a man absolutely to be depended upon, and this is a list of separation orders that he personally has had from January 1898 to December 1909, and he has had 23, and in seven cases the man is now living with another woman as man and wife. In three cases the man is living as a lodger with a woman alone in the house, but not openly as man and wife. In one case the parties are living respectable lives; and the other nine cases he has lost sight of. That is the evidence of this man who, as I say, is one of the greatest friends of the mining population.

12,874. Then practically it comes to this, that in all those cases where the husband has been separated he has formed an adulterous connection?—Yes.

12,875. In all those cases that can be traced?—Yes, with the exception of one. But I am bound to say that the police do not agree with that; but this man would have more chance than the police because it is not so much within their purview.

12,876. Then you say you have further statistics; I do not know whether you think they are worth bringing before us?—No, I think I have troubled the Commission with enough now.

12,877. I should like to ask you your views about the reporting of cases?—I think it would be impossible to stop the reporting. I think a much more important thing would be to hear these cases in camera. No amount of reading can do the harm.

12,878. But at quarter sessions and assizes where this class of cases are heard, they are only heard before those present, whereas the reading is for the whole public?—I very much doubt whether the working classes read much. There is a good deal of football and so on. They have not much time.

12,879. Your view would be to hold them all in camera?—Yes; I cannot see where the chance is of miscarriage of justice. With reporters present, and appeal on fact and law, I cannot see what harm would be done.

12,880. If it was in camera the reporters would not be there?—I mean as to the general public. I would have the reporters present certainly. My experience is that the papers in the West Country are very careful how they report these cases.

12,881. (*The Archbishop of York*.) I gather from your evidence that you did not object to the statement that there would be considerable variety in the administration of the law by the county court judges, but you rather maintained it must be so?—Well, only with regard to cruelty. Even in the High Court, as I follow the cases there must be diversity. In all the

cases I have read there is diversity as to what constitutes cruelty. It is impossible to have an exhaustive definition of cruelty.

12,882. On that point, supposing aggravated cruelty were added to the grounds of divorce, there would be very great diversity?—I think there must be, your Grace; I think the standard must differ in various parts of the country.

12,883. Your point is that in that and in other respects there must be considerable variety?—I do not see how you can avoid it. Like sentences; you never get an absolute unanimity of sentences.

12,884. While so much depends on the human element, would you say that the different dispositions and temperaments of the judges would bring in some variety?—No; I think as a class county court judges try to suppress their temperaments and administer the law as it is.

12,885. The variety would be in the nature of the facts and not the temperament of the judge?—Yes.

12,886. With regard to the cases you have brought before us; have these been gathered out of your experience of 19 years?—No, some of them I have gathered and others I have had told me, which I have enquired about for the purpose of this Commission.

12,887. So that, of these eight cases, not all have been within your own personal knowledge?—I could have brought any amount of cases, but I thought it would be wearying the Commission. At first, undoubtedly, there would be a very large number of applications, but then it would settle down to a comparatively small number.

12,888. You said that so many Cornish men go abroad after being married for a few months, and stay away for years?—Yes.

12,889. With regard to the suggestion which has been so often made to us that desertion should be a ground for divorce, would there, in your judgment, be any temptation to these Cornish men who go abroad to say, "Well, let us marry here, and then we will go abroad, and there will be no responsibility"?—As a matter of fact, a Cornish man always has the idea he is going to return to Cornwall; it does not matter how long he stops out, he always has it at the back of his mind that he wants to end his days in his own delectable duchy.

12,890. But if he knew he had to go away for one or two years, or four years, whatever the suggestion is, and he could then be divorced; he would be able to come back when he liked, without finding a wife waiting for him?—I am afraid the men are not immaculate sometimes when they are abroad; I am afraid not; but they keep it very close, and they do not tell on each other when they come home.

12,891. I was interested in what you said about attendance at court during the hearing of these cases being bad. Do you mean it would be bad for the moral ideas of the neighbourhood that these cases should be heard?—Yes, I think so, I instanced that anybody who has had experience at petty sessions, when you see how the court fills when there is an affiliation order, and the delight in the evidence at certain parts, would know what I mean.

12,892. If there were divorce cases in your court and no law was passed to exclude the public, you mean these sittings would be very largely attended?—Well, I think they would not, because I am so entirely of opinion that the cases would be so absolutely clear, undefended cases, that there would be none of the details which would interest the sort of people who would come. They would be such very simple cases.

12,893. Then these are the only cases that you have come across, but if the law were altered different kinds of cases might come more frequently?—Personally I do not think the working classes have the time or the money to indulge in any of the fancy—

12,894. Certainly not, but I think it was indicated already this morning that the temptations in their way are probably far greater than those of other classes?—Well, I think they are distinctly greater. Myself I do not agree with what my brother Austin said on that point at all.

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[Continued.]

12,895. (*Chairman.*) I should just like to ask you this; why do you think there would be such a difference of views about cruelty? It has been defined by the highest tribunal, the House of Lords, and I always acted on that definition and no other?—Well, probably I am wrong in that.

12,896. The only difficulty is, when you have got your definition, to apply it to the facts?—Yes.

12,897. It is the proof, not the definition?—Yes, it is the proof.

Adjourned for a short time.

12,900. (*Mr. Brierley.*) There is just one thing, Judge Granger. You suggest that all the separation orders should be transferred to the county courts, do you not?—Yes.

12,901. Have you considered whether that would add any great burden to your work?—I do not think so. Of course I am only dealing with the country districts.

12,902. Yes, I was going to point out that in Cornwall there are only 18 separation orders granted in the year 1908?—Yes.

12,903. The average seems to be about 19?—I have not dealt with the case where there are hundreds of them, but that would have to be provided for, I take it, by the legislature.

12,904. You would not anticipate any great addition to your work in your particular county?—Oh no, not after the first six months. There would be a great number of divorces at first, you know.

12,905. Yes, I was rather alluding at the moment to the applications for separation orders which now go before the magistrates?—No, there would be rather less.

12,906. (*Judge Tindal Atkinson.*) With reference to separation orders being transferred to the county courts, would that be necessary in all those districts where there are stipendiary magistrates?—No, I do not think it would.

12,907. Therefore your suggestion is confined to those districts where the justices are not stipendiary magistrates?—Yes.

12,908. And in those districts you think the county court judge could deal with them?—Yes.

12,909. Supposing there should be any objection raised to that, would it be advisable there should be a power in the magistrates to grant an order for a limited time, and then, if it is to be made permanent, that that should be made permanent by the county court judge of the district?—That might be feasible, yes.

12,910. With reference to the juries; the Cornish juries, you say, have some peculiarities of their own?—Well, I think they are too sympathetic, you know, and they do not consider the evidence. They would get to know all about the case, and it is very difficult for them.

12,911. Is there any difference with reference to the character of the juries between those who are summoned at the assizes and those who are summoned at the county court?—I do not think so; I should think the common juries are the same class exactly.

12,912. It has been very broadly stated here that the juries in the county courts are a very inferior set of men?—Oh, I do not agree with that at all. But it is very difficult for laymen to confine their attention to the evidence in court. It is almost impossible for anybody, except on very rare occasions, not to be influenced by things they have heard outside.

12,913. In your opinion, if the jurisdiction is transferred to the county court, you would prohibit the summoning of the jury?—I should.

12,914. Supposing the judge thought it was a case in which there should be a jury, would you give him the power to direct that a jury should be summoned?—Certainly, I should give him the power to say this is a case I should prefer to have a jury in.

12,915. You say, with regard to the diversity of opinion amongst the county court judges, you do not think any mischief will arise from that?—Certainly not. I do not see that there could be any mischief arise from that.

12,898. (*The Archbishop of York.*) Your meaning, I gather, is that the kind of blow which might be given by a duke would be cruelty to the duchess, but the blow given by a man to his wife would not be?—Yes. For example I have a case as magistrate where the cruelty was on two occasions that he said "Oh, get out of the way," and pushed the woman with his elbow like that (*describing*).

12,899. You have to consider fairly the habits and social atmosphere in which the people live?—Yes.

12,916. The legal mind would probably generally adopt the same principles?—Yes, and if they adopt the wrong there would be an appeal which could set them right.

12,917. It has been suggested that a better tribunal to decide these cases of working men would be the assizes and not the county court. Do you think the assizes would be a good tribunal for these particular cases?—I think it would be an impossible tribunal because the cost would be as great. It seems to me, when you have the waiting at the assizes, and staying up there and not knowing when they are coming on (and then you would have to instruct a London agent), it would be better to leave it as it is, in my opinion.

12,918. The suggestion has also been made that the county court judge, instead of having a jury, might sit with two judges of the county especially appointed by the quarter sessions to help him. Is that a matter you have considered?—I have not considered it, but I unhesitatingly say it is totally unnecessary; it would not be any assistance.

12,919. Do you agree that it is very essential, particularly in distant places like Cornwall, that the county court judge should have power over the custody of the children?—Certainly.

12,920. And as the law at present stands, county court judges have no general power over the custody of children?—No.

12,921. Therefore, however hard the case may be, the children must remain in the custody of either the husband or the wife utterly unfitted for the purpose, and there is no remedy without coming to London?—No.

12,922. And the parties are debarred in that case, I suppose?—And with regard to that I may say in the country one has great experience in dealing with questions of children, because under workmen's compensation cases I encourage the litigants to come to me in my private room or court as to help and direction in bringing up their children.

12,923. Do you agree with Judge Austin that the doctrine of recrimination should be abolished?—No, I cannot say I do.

12,924. If both parties are guilty you are opposed to a divorce?—Certainly. I think it would be inclined to make people reckless.

12,925. Is there any object in keeping parties together when they are equally guilty?—No, I quite see the objection to the course; but they might separate, and then again comes the objection to the separation. I think anything is better than loosening the law of marriage.

12,926. I should just like to ask this question. You heard the evidence given by the Credit Drapers this morning, that in no case was credit given to the wife without the knowledge of the husband?—That is not my experience.

(*Chairman.*) That is embarking, I think, on an inquiry which would put upon us an issue which I do not think we are here to try. I doubt, Judge Tindal Atkinson, whether it is really worth pursuing that. We have had statements made by Judge Steavenson, and those gentlemen who have attended this morning, have at their own desire come to tell us their statements, but I think myself if we travel outside what has taken place we are beginning to take upon ourselves the burden of an issue which is rather outside anything which is directly in question in this inquiry.

(*Judge Tindal Atkinson.*) I think your Lordship is right, but—

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(*Chairman.*) Your question is directed to showing that possibly (never mind what the answer is) that there are many cases in which goods are supplied without the knowledge of the husband.

(*Judge Tindal Atkinson.*) Yes, if your Lordship thinks that is outside the scope of this inquiry I will not press it.

(*Chairman.*) That is my present impression, because it is a very outside issue. Do you agree Sir William?

(*Sir William Anson.*) I confess I think it is somewhat outside the scope of our inquiry.

(*Lord Guthrie.*) We cannot enter on that.

(*Chairman.*) I think we must leave that where it is.

12,927. (*Lord Guthrie.*) Just one or two questions I should like to have information upon. How many hours does the railway journey take from Penzance to London?—Well, there is a quick train now that starts at 10 and gets in at 4.45.

12,928. But does it mean that if a witness comes from Penzance to London to give evidence in London he loses three days, assuming his evidence is taken the day after his arrival?—Yes.

12,929. He cannot come and go the same day?—Well, he can, but it is not fair to expect a witness to travel all night.

12,930. For practical purposes it is travelling one day, giving evidence the next, and going back the next?—Yes, and there are cases where they are kept up four and five days. I have had those cases brought before me by counsel who have been in the case.

12,931. And you have to consider the loss of wages and cost of travelling expenses and of keep?—Yes.

12,932. As loss entering into the matter?—Yes; there is a small allowance, I think, allowed to the petitioner, but it is not enough.

12,933. You said you thought more harm was done by allowing the court to be filled at the trial in the matrimonial cases than by the reports in newspapers. Is there any reason why the judge should not, apart from hearing cases in private, be able to control the amount of accommodation so that while the court is open the number of the public who are admitted should be very small?—You cannot control it in that way, except to say you will not have the passages filled. That is the only way you can control it.

12,934. When I hear divorce cases I arrange so that there shall only be accommodation for five members of the public. Why should not that be done?—I should like to know how your Lordship does it.

12,935. What is the difficulty? You simply give orders, and in that way nobody can say it is a hole-and-

corner business; it is open to the public, but there are two instructions to be given: only five to be admitted, and no boys and girls?—No, I should turn out boys and girls as a matter of course, but your Lordship probably has a large staff of policemen and retainers. Now we are dependent entirely on our own exertions for keeping order and everything else practically.

12,936. So you think the only remedy would be to shut them out altogether?—I cannot see the advantage of their being in, because there can be no miscarriage of justice if the reporters are there, and there is an appeal on law and fact.

12,937. In addition to the damage done to the people who are there, is it not the fact that witnesses are sometimes seriously hampered in giving their evidence, especially women, if there is a crowded court to be faced?—Yes, that may be so, but I think in some cases I never allow, when I am sitting as a magistrate, a woman to be left alone in the court without at least a couple of her women friends to support her.

12,938. Have not you observed that it does complicate the situation as compared with a small number present?—I think it may have some effect in that way.

12,939. So you think it is no advantage to the parties, nor to the witnesses, nor to the public?—Not the slightest, and sitting in quarter sessions I must say I cannot see, now that there is an appeal to the Court of Criminal Appeal, any advantage in having the people in.

12,940. You were asked by the Archbishop about Cornishmen going abroad, and the risk there might be of collusive desertion in such cases. Did I understand that these men continue to send money and correspond with their families?—Oh yes.

12,941. Then of course in these cases there could be no question of desertion, because legally they are not deserting at all?—Oh no; and then the wife will never try by collusion with her husband to get rid of her breadwinner. A working woman with a family has not a chance of getting another husband.

12,942. Take the case of four years being necessary, do you see how there can be collusion; because the woman would have to live without assistance from her husband during the four years if it was a question of collusion?—I confess I cannot see how there can be collusion in those cases.

(*Chairman.*) Thank you very much indeed on behalf of the Commissioners for your evidence.

Mr. EDMUND WILLIAM GARRATT called and examined.

12,943. (*Chairman.*) What is your jurisdiction?—My court at present is West London.

12,944. A magistrate's court?—I am one of the metropolitan police magistrates for West London.

12,945. Where is your court situate?—Close to the Olympia.

12,946. How long have you been there?—Only about three years. I was at the South-Western Court before. I have been altogether 10 years a magistrate.

12,947. You have had therefore a considerable experience of the working of the Act of 1895?—Yes, particularly in West London where there are a very large number of applications.

12,948. I would first ask you, do you think that at present it is practicable for the poorer classes to obtain a divorce on the ground of expense?—No. I think it is quite impracticable at present.

12,949. To what extent do you think if local jurisdiction were given such jurisdiction would be used?—I do not think there would be any very great demand for divorce amongst the classes with which we are called upon to deal in separation cases. The women will apply I always consider very recklessly for a separation, the idea being that if the worst comes to the worst she can go back to her husband; but I think most of the people would hesitate very much before applying for a divorce. I do not think there would be any great demand for divorce, but I have had several cases before me where women have made applications

for divorce, being ignorant of the fact that the court could not grant them, and where, certainly assuming their statements were true, the case was one of very great hardship that they could not get a divorce.

12,950. With regard to the Act of 1895 have you any special matter to call attention to?—I am very anxious to call attention to that because that is a matter which personally I feel very strongly indeed upon. I might say first perhaps—I think it might throw some light on my evidence if I state it although the West London Police Court sounds like a respectable district, as a matter of fact the district of the West London Police Court contains some of the poorest and some of the worst criminal parts of London. Then, “I desire particularly to call the attention of the “Commission to the failure of the Summary Jurisdiction (Married Women) Act, 1895, to effect the “object its promoters had in view; to the insurmountable difficulties attending the administration of the “Act, and lastly to the evils and mischief resulting “from the operations of the Act; and I go so far as to “say that the evils to the community at large resulting “from the operations of the Act more than counterbalance any beneficial effect it may have had in “remedying individual wrongs. The abuse of the Act “must be patent to anyone called upon to administer “it. Not only does every magistrate have to reject as “groundless or vexatious a great proportion, probably “a majority, of the applications made to him, and this

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"on the applicants 'ex parte' statement; but of those granted a very large proportion are dismissed; and what is even more significant, in a very large number of cases the complainant does not even appear at all. I find that at the West London Police Court, where I sit, during the year 1909 out of 217 summons granted only 89 resulted in an order being made, 80 of the remainder being marked 'no complainant' and 48 dismissed on hearing." Of course there has been no record of the number of applications made and refused because no record is kept of those, but I should say that probably at least 30 per cent. of the applications made for separation orders were refused in the first instance as absolutely groundless; that would be altogether outside the 217 summonses that in fact were granted: "My experience has convinced me that a great number of women take out summonses merely with a view of putting pressure for some reason on their husbands, and that such applications are constantly made in the heat of the moment and generally owing to jealousy in connection with some other woman. I need scarcely add that in the case of this Act, this abuse is particularly mischievous. Such application tending to further embitter the relations of domestic life. Further it is a fact that a woman not unfrequently obtains two or even three separation orders from her husband. I had before me lately an application in which the applicant admitted having had three previous separation orders from her husband," and I do not think that this can have been contemplated by the authors of this Act. I think it is a very great evil. "I am convinced that the idea that a separation order can be easily obtained, which certainly largely prevails in this class must tend in some degree to increase the utter recklessness with regard to marriage, which is so marked among the lower grades of the working classes."

12,951. Then you proceed to point out some of the difficulties attending the administration of the Act?—Yes.

12,952. Will you give us those?—"A more serious matter, however, is the difficulty amounting almost to impossibility, of carrying out the provisions of the Act without doing more harm than good. Assuming a magistrate has come to the conclusion that a separation order should be made, his first difficulty is to ascertain the earning capacity of the parties. I may mention in this connection that in the court in which I sit, almost all the applications come from one or two classes, (a) the unskilled labouring classes, and (b) the small dealer or costermonger class. Applications from the ranks of the skilled labouring class being very rare." I do not think there are probably one in 20. "In the case of the costermonger class, it is quite impossible to ascertain even approximately their earnings which are precarious and fluctuating, there being no data to go by. In the case of the unskilled labouring classes it is possible, of course, to ascertain approximately their earnings. The case which is much the most frequent is that of a man earning a maximum wage of from 21s. to 28s. a week, and allowing for times when the man is out of work, I should say 21s. would represent an average wage in these cases all the year round, and as the applications do not occur as a rule early in married life there are usually a number, sometimes a large number, of children. In such cases the wife has virtually no earning capacity, and the magistrate is faced with the impossibility of making 21s., what was barely sufficient to maintain one home, maintain two. Even if he leaves the man only the barest necessities of existence, in which case he will not comply with the order, there is insufficient to maintain the wife and children in a separate home. In my experience the result in the majority of cases is that the wife has no alternative but either to return to her husband, in which case her position is worse than before, or to go with her children into the workhouse. No one administering the Act can avoid being impressed with the misery and destitution resulting in a large proportion of cases from separation orders, the children, whose physique is undermined from insufficient food, being the principal

"sufferers." That has struck me most painfully in dealing with these cases. Of course, when they come up for the arrears, the fact of how they are living and so on is gone into, and nothing has distressed me more painfully than the destitution from which these unfortunate women suffer, and which the children suffer, which is a very serious matter. Then, with regard to the enforcement of the orders.—"In a large proportion of cases it is impossible to enforce the orders when made. As stated above, the number of orders actually made in the year 1909 in the West London Court was 89; the number of summonses for arrears in respect of previous orders, 50; and in 23, or approximately, 50 per cent. of these cases the defendant was committed to prison." That is, in practically half the cases the man had to be sent to prison. "In very few probably of the remaining 27 cases were the arrears paid in full; the wife, as a rule, preferring to take an adjournment on the chance of getting what she can out of her husband, rather than a committal order, which deprives him of the power of earning anything. The husband, as a rule, is fully alive to the position, and takes advantage of it to compel the wife to accept a smaller sum. I am satisfied that, as a fact, very few orders are ever fully complied with." I know it is a common experience of mine in cases where arrears are run up, and I am about to commit him to prison, for the woman to implore me not to do so, because, "If you do," she says, "I will starve; give him a chance to pay me," and sometimes in that way we get part of it, but in the meantime the woman is subject to great suffering and destitution. Then, "reference has been made in evidence given before the Commission to the question of how far the operation of the Act leads to immorality. It is difficult in this case to distinguish between the 'post hoc' and the 'propter hoc,' but I am satisfied that the great majority of men separated from their wives live in adultery with another woman, by whom they frequently have children. In the case of women I believe immorality to be comparatively rare." The only way one can get at those facts is—there are no very accurate data to go by—but there is one way we can get at it, that is when the woman comes up for arrears, one has cause to try and find out sometimes if the man could pay her, because he is living with another woman, as she alleges. Although it is difficult to get actual proof, the result has been a very strong conviction that five out of six men who are separated from their wives, live in immoral relations with another woman, either permanently, in which case they have a large family of bastard children, and all the evils resulting from it or relations of a less permanent character. "In my opinion all separation orders, as distinguished from maintenance orders, should be abolished." I am speaking now of the magisterial jurisdiction. "And if it be necessary in any case to separate permanently husband and wife, and I believe it is necessary in very few cases, a divorce should be substituted for a separation order as being the lesser evil of the two. I consider that provisional separation for a short period would be most undesirable, as tending to increase all the mischiefs which result from the present system."

12,953. Now would you tell us what your remedy really comes to for the present state of the Act?—Yes, if I might just deal with the different causes of the present separation orders. First of all, you have got what is called persistent cruelty. Now that has been a phrase, I think, that has been greatly abused. Courts vary immensely, in my experience, as to the meaning to be put on that term; they take very different views of it. Some courts will give a separation on evidence of persistent cruelty on which another court would not think for a moment of granting it. There is nothing, I think, on which there is a wider divergence of judicial opinion. But my view is, most of these cases are not persistent cruelty, but are what are not uncommon in the class that I see most of in my court, namely, a blow and knock in the face or black eye or some other violence, and in very few cases does this occur except when a man is drunk. I have had very few cases of

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men fully in possession of their faculties being guilty of great brutality to the women. The usual case is that, if a man comes home the worse of drink, the woman, unwisely, perhaps, takes the opportunity of telling him her mind, and the man, being drunk, immediately strikes her, and she applies for a summons for separation. Now those cases are unquestionably cruelty, and there is a certain element of brutality in them, but they do not represent in that class what they would in a better class; they are rather common. I think those cases can be perfectly well dealt with by the powers of imprisonment and finding sureties.

12,954. For good behaviour?—For good behaviour. I find, my Lord, that making a man find sureties for good behaviour he has very seldom again struck his wife—or send him to prison.

12,955. Would you extend that to cases of aggravated assault?—No.

12,956. What other cases?—Aggravated assault is the principle one; I forget what the other phrase is; causing grievous bodily harm, I think.

12,957. Yes?—No, in those cases, I think, the woman ought to be entitled to a divorce, but that would have nothing to do with the magisterial jurisdiction. At the present time, the quarter sessions have power in those cases to give a woman at once a separation. I think it would be better to substitute a divorce.

12,958. The quarter sessions have power to give separation?—Yes, in all cases where there is grievous bodily harm or aggravated assault.

12,959. That is not in the 1895 Act, is it?—Oh, yes; that is a matter which the quarter sessions have power to consider now.

12,960. That does not go to quarter sessions?—Yes; if I commit a man for inflicting grievous bodily harm it must go to sessions, and then the sessions have power to grant a separation.

(Mr. Brierley.) “Any married woman whose husband has been convicted summarily for aggravated assault or whose husband has been convicted on an indictment for assault on her.”

(Chairman.) That is the convicting court.

(Mr. Brierley.) Yes, but it would be a court of summary jurisdiction that would convict for aggravated assault, but on the indictment it would be the quarter sessions.

12,961. (Chairman.) It all comes under that Act?—Yes.

12,962. Then is your point that in those cases the real safety of the wife is concerned?—Yes.

12,963. And cruelty amounting to that should entitle to a divorce?—Yes.

12,964. For less than that you think binding over is enough?—Yes, or imprisonment. A woman constantly comes to me and charges her husband with assault of a more or less serious character, and her first prayer is not to punish him, or send him to prison; she says, “Give me a separation,” and the man gets off. He gets an order made against him, and then in a very large proportion of cases he does not obey the order, so that he has escaped punishment. He does not obey the order, and the woman’s position is a serious one.

12,965. I want to get it into a concrete state. Your recommendation would be that where safety was concerned that should be a case for the divorce court?—Yes.

12,966. Where it was not amounting to that, you would rescind that part of the Act of 1895 which deals with that, and leave it to the correctional tribunal?—Yes, quite so. The part about persistent cruelty should be taken away. Now the second case; aggravated assault has been dealt with. Now take the case of desertion and failure to maintain. The present Act is perfectly futile in those cases because the woman has no means of tracing the man or enforcing her rights. If the man deserts the woman, and goes to another town, the woman cannot trace him; she has no machinery for doing so, and she does not. The poor law authorities decline, although I have asked them to apply for a warrant, unless the woman consents to go into the poor house. Now the women will not do it, and there one must sympathise with them, because if

a woman with children goes into the poor house it is hopeless, and the guardians will not apply for a warrant against the man unless they become chargeable on the house. If there was a warrant the police would follow it up, and the man would be arrested. The magistrate has no power to issue a warrant on the application of a woman for desertion, but only a summons, and a summons in those cases is useless. The same applies to the clause as to failure to maintain. There are very few cases under those clauses, and what there are cannot be enforced, in my experience. Now I have no hesitation in saying the poor law authorities should deal with those cases. If the poor law authority would at once apply to the magistrate for a warrant, as they have power to do, because probably she gets outdoor relief, the man could be arrested and brought up, and then something might be done; at present nothing can be done. And the same with regard to the failure to maintain. I maintain it should be the duty of the poor law authorities, if the woman is left destitute by the husband failing to maintain her, to apply. As the law stands at present, the woman has no machinery for tracing a man, or bringing him back.

12,967. What power has the poor law authority to trace him?—The poor law authority under the Vagrant Act has power to apply for a warrant where the man deserts his wife.

12,968. But power to trace, I mean?—Well, they use the police. More than that, assuming the man is arrested for arrears, the unfortunate woman has to provide the whole of the money for bringing him back to London.

12,969. Would you rescind the Act again then on that?—Unquestionably. Then I myself have a strong feeling that a woman should be entitled to a divorce when the man is an habitual drunkard, so found by the court—not by a summary jurisdiction court, but by the divorce court, or jury, or whatever tribunal it may be. I think it is a dreadful thing that a woman should be compelled to live with a man who is found by verdict to be an habitual drunkard beyond reclaim. I think the same should be the case with regard to an habitual criminal. Suggestions have been made as to certain lengths of sentences. I think that is a very bad criterion to take. There is power now to find a man guilty as an habitual criminal, and I think when once a man is found guilty by a jury of being an habitual criminal—that is to say a man living by crime—apart from the nature of the offence he commits, she should be entitled to a divorce.

12,970. Is “habitual criminal” defined?—Yes, there have to be a certain number of convictions within a certain period; I think three.

(Witness.) Now with regard to lunacy, which is another point, I personally have a very strong feeling that lunacy should not be a ground for divorce.

12,971. (Chairman.) Might I ask this before you pass to that. I can quite follow the habitual criminal point, that where you have the finding of that let there be a divorce, but you have not suggested what should happen where there is a criminality of a serious character in one act?—I am afraid that is very difficult to deal with unless you add a schedule of particular offences. There are obviously some.

12,972. What do you suggest?—Well, any offences of violence in connection with women; I mean sexual offences. But it would be very difficult to draw up any schedule that would be satisfactory, because the circumstances of each case vary so enormously, and the degree of criminality varies so enormously.

12,973. Is not the test of separation for many, many years to be considered?—Oh, I think so.

12,974. Apart from the nature of the criminality, you might have a case of a very serious criminal offence committed by a man only married a few months?—Yes.

12,975. Shut up for life perhaps?—Yes, I quite see what your Lordship means, but still it is not a very satisfactory thing to make the length of time the one test, and it is difficult to define the offences which would entitle a woman—

12,976. However, you are clear about the habitual criminal question?—Quite clear.

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[Continued.]

12,977. But as to the casual criminal you feel a difficulty?—Yes, and I do not think a woman would claim a divorce from what I may call a casual criminal. Women are very forgiving, and I am surprised at the way they welcome back a husband after a long term of imprisonment. Then as to the lunacy, I cannot see where the distinction is to be drawn between a mental and a physical condition. It may be as hard for a woman to have a man physically broken down—in fact it is worse because she would have the charge of his maintenance and keep, and I cannot see why one should draw the line at lunacy.

12,978. Well, the distinction drawn is, that in the case of physical infirmity it is her duty, and probably her privilege, to look after and nurse him; but where the law interposes, being put into operation by her or somebody else, and shuts him up entirely away, there is a complete separation?—Then comes the difficulty as to the possibility of his recovering. There are certain cases that are bound to prove fatal in a certain length of time, but there are cases where the question of recovery is a matter of doubt.

12,979. Then you are against the view that lunacy should be a ground for divorce?—Absolutely, yes.

12,980. Then with regard to the court exercising jurisdiction?—In one respect my views have somewhat been modified by what I heard Judge Austin say to-day. My objection to the county court having jurisdiction is not with regard to the competency of the tribunal at all: it is absolutely competent: but I confess I should have thought, especially in the London county courts, they were much too busy. What will eventually happen I do not know, but at first there will be a considerable number of applications necessarily for divorce. They are cases which require a great deal of care, and take a great deal of time to try properly and conscientiously, and I should doubt very much—the county court judges know better, of course—if there is time to give to those cases. I know one of the great evils of our work is the difficulty of dealing with those cases properly—where you have a great pressure of small charges. I have had at West London on a Monday morning as many as 100 prisoners—most of them small offences, and I have had over 100. Then I find a list of summonses to face, very often including two applications for separation. It is quite obvious that there is not a proper amount of time for dealing with those cases and I think the county court judges would be faced—in London at all events—with the same difficulty. I think when they came to consider the nature of the cases, and the number they would find themselves very awkwardly placed.

12,981. Then that applies to the police courts as well as the county courts?—Yes.

12,982. Then what is your suggestion?—Well, I do not know that I am entitled to speak with any authority, but my idea was that the great thing would be to get a uniformity of practice in matters of this kind; to try and avoid the loose practice that exists under the Summary Jurisdiction Act, and get some principle established, and have a fixed rota or circuit of judges to deal with these cases.

12,983. Including separation cases?—Yes.

12,984. You would get rid of all the separation cases, practically?—Yes, and it would come to be only a question of divorce or maintenance orders taken out by the guardians under the poor law, apart from the question of separation at all.

12,985. Then you treat the husband and wife, for the purposes of divorce, on the same footing?—Absolutely, though it is quite true, as has been pointed out, that the consequences of adultery on the part of the wife may be much more serious than adultery by the husband—a casual act, as it has been called.

12,986. It would be convenient if you would read your conclusions I think?—Well I have said, “I think separation orders by courts of summary jurisdiction should be abolished. In my opinion the powers of the court are quite sufficient to enable the court to protect a woman living with her husband from rough usage without the necessity of a separation order. When a man is convicted of inflicting grievous bodily harm on his wife, she should, in my opinion, be entitled to

divorce. Cases of desertion and failure to maintain, should, in my opinion, be dealt with at the instance and on the application of the poor law authority, who would have the power to trace the husband and enforce any maintenance order a magistrate might make. At present orders made by magistrates at the instance of the wife are of little value, owing to the difficulties in the way of the woman enforcing them.” Then I have said that as to an habitual drunkard and an habitual criminal there should be a divorce.

12,987. (Sir William Anson.) I think you said you thought the Act of 1895 has really induced a further recklessness in marriage?—I said I thought it tended in that direction.

12,988. Are there any statistics to bear that out?—Oh no, it is merely a suggestion.

12,989. Then with regard to assault, I think you said a woman would often ask for a separation order instead of the husband being convicted of an assault?—Yes; that would be a case where she could not have a separation order, but she makes an application, and when you point out one act of assault is not sufficient, she generally alleges two or three other acts of assault, so as to bring it within the words “persistent cruelty.”

12,990. Then she develops a case of persistent cruelty?—Yes.

12,991. Then persistent cruelty you would treat as a ground for divorce?—No, I would treat nothing except aggravated assaults as grounds for divorce.

12,992. What would happen where the husband had habitually ill-treated her without an aggravated assault?—I do not think any law you will make except punishment will stop a man being guilty of unkindness to a woman; but I think the powers of the magistrate are sufficient to stop it if the punishments are heavy enough. I do not think a man will run the risk twice of a substantial imprisonment.

12,993. So that either he would go on and become an habitual criminal, or you would give such punishment the first time as would stop it?—These assaults one speaks of are very seldom aggravated assaults. The woman generally alleges she has had a bruise on her head, or a black eye, or something of that sort. They are never very brutal, but more of that character.

12,994. (Chairman.) May I put this. If it becomes a case of real safety you would then give a divorce?—Unquestionably.

12,995. If it does not amount to that, but what is commonly spoken of as cruelty, you would punish rather than separate?—Yes.

12,996. (Sir William Anson.) But in no case would you separate?—No—divorce.

12,997. If the assault was really an aggravated assault, involving danger to life or health?—Then I would give a woman the right to a divorce.

12,998. Upon one assault?—Yes, if it was sufficiently serious in character.

12,999. Otherwise you would punish a man heavily, or if the offence was repeated?—Or what is more effective sometimes, make him find a surety for his good conduct, or, in the alternative, imprisonment; and if he finds a surety he generally leaves the woman alone. That is my experience.

13,000. But one serious assault to entitle to a divorce?—Yes, if it was such as to endanger her life or health.

13,001. And habitual drunkenness?—Yes.

13,002. And one serious scheduled offence?—Well, where the man has been found guilty of being an habitual criminal by the verdict of the jury I would give the woman absolutely the right to a divorce. How far it should be so with regard to an individual offence is a difficult question and would require careful consideration.

13,003. Then, having considerably enlarged the range for divorce, what should be the tribunal?—Well, as I say, I am doubtful if the county court judge would have time. Another objection is that they are too much, I think, at the door of the people. One of the evils in connection with the police court has been that a woman immediately after a heated row with her husband rushes straight to the court to ask for a separation without considering the ultimate conse-

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quences. I am afraid that the county courts being so much at their doors it would have the same effect. Therefore, if possible, I should prefer a special tribunal to deal with these cases of divorce.

13,004. Would it be possible to have a small group of judges; I mean to enlarge the Probate and Divorce Division, and always have a certain number of judges going round?—Yes, or I think that judges of the status of county court judges, assuming they took those cases regularly, and travelled the circuits for the purpose of taking them regularly, would meet the same purpose, and you would get the uniformity of practice which I doubt you would get in the other case.

13,005. And with regard to the magistrates, you would have the same lack of uniformity?—Yes, there is at present, I know that.

13,006. (*Lord Guthrie*.) You propose to abolish separations by court of summary jurisdiction?—Yes.

13,007. What about judicial separation by the High Court?—Oh, I should not interfere with that.

13,008. Why would not you interfere with that?—Well, I know the High Court deals with a rather different class of people. The objection to a separation in my opinion among this class that I am dealing with is very great, for the reasons I have given, and because it leads to a great deal of immorality. I do not think separation amongst the upper classes does lead to immorality necessarily.

13,009. Would not you be continuing what is so much objected to, namely, providing separation for the rich and denying it to the poor by your method?—I hate the expression one law for the rich and another for the poor because the same law for rich and poor may act very differently.

13,010. But you must remember the case of our Roman Catholic brethren. They cannot go for divorce, and it would be excluding the poor amongst them from all matrimonial remedy?—I can quite see if their views excluded them from the remedy they would be without a remedy.

13,011. That would need to be considered?—Yes.

13,012. You said women go very easily for separation?—Yes.

13,013. Now I suppose that would not apply to divorce which would involve all loss of maintenance?—I do not think it would apply to divorce at all.

13,014. They go for separation because they know they will get an order on the husband to maintain?—Yes.

13,015. In the case of a divorce that would be at an end?—I had a woman the other day who applied for a fourth separation; she got three from different courts. They feel they can always go back, and then get another one.

13,016. So that the two cases are quite different?—Yes.

13,017. You were asked about the question of lunacy. Take the case of a man who is certified to be irrecoverable in whose interest would you maintain the tie between him and his wife?—I cannot say it would be to anybody's interest to maintain it; I cannot say it would.

13,018. You said you did not see the difference between physical incapacity as in the case of paralysis, and mental incapacity. Are not there three differences. In the case of physical incapacity the family life can be maintained, whereas mental incapacity involves removal and detention in a separate establishment. Secondly, in the case of the physical the person's ego is continued, and in the other case he ceases to have any ego at all. And thirdly, if a man proposed to divorce his wife on the ground of her paralysis every decent man would cut him, whereas in the case of a man divorcing his wife because she was a hopeless lunatic his proceeding would be generally approved. Is not that so?—No, I do not think amongst the poor it would. I think they have a strong feeling on that subject.

13,019. Do you think the public would look on the two matters as being equal?—Among the poor I have been struck with one thing, that they look with great feelings of sympathy on cases of lunacy.

13,020. We all do, rich and poor?—Yes, but I think it is brought in a way more home to them than to other classes. It is much more common in their class.

13,021. In short I suppose you agree that if the power to divorce were given it would not be often exercised?—Very seldom.

13,022. But do not you think there might be cases where, in the interests of the children it ought not only to be a right, but it would be the duty of the wife?—Well of course I can imagine such cases no doubt, but whether it would be wise to legislate from the standpoint of a comparatively small number of cases I doubt.

13,023. (*Judge Tindal Atkinson*.) You said in abolishing separation orders you would in the case of aggravated assault punish by imprisonment?—Yes.

13,024. Might not there be this objection to that, that if a man at the instance of his wife had been imprisoned for a month or two months, when he came out again the condition between the husband and wife would not be very comfortable?—No, certainly not; but I have been rather struck with the fact that I think a man as a rule behaves much better when he comes out.

13,025. Of course he has the right to resume cohabitation in that case?—Yes.

13,026. But he would not in the case of a separation order?—No, that is quite true.

13,027. One question in reference to lunacy. May not there be this difference between lunacy and physical infirmity, that in the case of intermittent lunacy you have to consider the offspring that may come after the spouse is released from restraint?—Yes, well, I quite agree that raises a very difficult question; the question of access by the man to the woman, after lunacy is a very difficult question, but I do not think it would be in the interest of the community in such cases to give a divorce.

13,028. Is it not a great hardship on the woman that she should be compelled to continue cohabitation with her husband who has been shortly released from a lunatic asylum?—Well they do it, and I do not know that they feel it as much as one would think really.

13,029. I understand in reference to county courts you agree that for access to the people it would be the best tribunal?—Yes, it is convenient.

13,030. You have your judge and your staff and 563 courts in the country within easy reach of all the suitors?—Yes.

13,031. So that for the purpose of locality and access it is the best court?—I should say so, yes.

13,032. Is your suggestion that a certain number of the county court judges might be selected to perform divorce work throughout the country?—I think that would be quite a feasible suggestion. It is only a suggestion. I have not thought very carefully about it, but my object is to get a body of judges who would habitually deal with such cases and so get uniformity of practice, because I have been so much impressed with the different interpretations put by the magistrates on the 1895 Act.

13,033. But if that is not possible there is nothing left but county courts?—I do not think so unless the Government is prepared to appoint additional judges, which I do not suppose it is.

13,034. (*Mr. Brierley*.) For a succession of trifling assaults you would abolish separation orders altogether?—Yes.

13,035. And trust entirely to the efficacy of punishment?—Yes.

13,036. I think your opinion of the efficacy of punishment differs from mine. Do not you find in many cases husbands are brought up more than once for assaults on their wives?—Not very often except in a case of a man who is more or less an habitual drunkard. In those cases I find it constantly.

13,037. Apart from a case of what would be called habitual drunkenness within the meaning of the statute; probably he may be a man of drunken habits?—Well of recurring drunken habits. That happens sometimes when he is drunk, but I wanted to point out that the suffering caused to the wife under the present system

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is far greater. She does not understand what she is doing in applying for a separation order, and in my experience in many cases they become destitute.

13,038. And the reason she does not ask for him to be sent to prison is because it will mean a period of destitution for her?—Yes, further destitution.

13,039. Which would probably be avoided in the other way?—Yes, I have again and again had to keep the woman out of my poor box. I have kept a woman and her children until the husband has come out of prison again. I have done that constantly out of the poor box.

13,040. Why do you say that a maintenance order obtained by a wife against her husband is futile as compared with one obtained by the guardians?—Well my experience is that the man goes away.

13,041. Why do you say you cannot get a warrant?—You cannot get a warrant on the application of the woman on the ground of desertion.

13,042. Why not? These orders are enforceable just as orders of affiliation?—No, I am not speaking of arrears, but the original order.

13,043. I beg your pardon. You mean she does not know the address for the summons to be served at?—Yes.

13,044. In that case she has to apply to the guardians?—Well, I have sent women to them often, but

they will not apply for a warrant unless she goes into the house.

13,045. You have said that you think the payments under these separation orders are badly made. Do you as a practice in your court order the weekly sum to be paid to the wife, or to an officer of the court?—To the wife. Our staff is not sufficient.

13,046. Then you have no means of discovering?—No, the only check I have is the women coming up and applying for orders for arrears.

13,047. You find that is frequent?—Yes, we tried to do the other, but it was found absolutely impossible.

13,048. We had evidence from one court—I think Newcastle—which pointed to the fact that these orders were well complied with?—Probably from Newcastle, they are a better-to-do class; but in my district they are of a very poor class.

13,049. One has rather to guess at it?—Yes.

13,050. Then it comes to this that you think on the whole the separation orders do more harm than good?—I am satisfied on that. In the interests of the women I am satisfied they do harm.

(Chairman.) I thank you on behalf of the Commission for your evidence, Mr. Garratt. It has been very valuable.

(Chairman.) I am going to ask Lord Guthrie to take Mr. Whitelock, as I may be called away.

Mr. WILLIAM HENRY WHITELOCK called and examined.

13,051. (Lord Guthrie.) You are senior registrar of the Birmingham County Court, and district registrar of the High Court, and you have held the position in Birmingham for over 10 years?—Yes.

13,052. To what extent do you sit?—We sit every day of every week, except Saturdays and at holiday times.

13,053. And how does the extent of your business compare with any other court?—We are just twice as large as the next largest court—Leeds.

13,054. With regard to the views of the working class in reference to the courts; what local courts are they familiar with?—The police court and the county court.

13,055. The one for criminal cases and the other for civil?—Yes.

13,056. Is it the case that since the County Court Act of 1903 many actions which used to be tried at assizes are now dealt with at the county court?—Practically all actions of tort in which the working classes are concerned, except the excepted jurisdiction of libel and slander and breach of promise.

13,057. In reference to the question we have to consider, questions of dissolution of marriage, what do you think is the natural court in the case of the poor classes to deal with such questions?—I think undoubtedly the county court, and they would so regard it.

13,058. You have seen objections stated to the county court in evidence before this tribunal. Have they affected your view?—No, it is unintelligible to me. It is quite news to me that the working classes have any low notion of the county court.

13,059. It is not in accordance with your experience?—Not in the least.

13,060. What about the suggestion that it is not desirable to have the court at the door of the people—too conversant with them and too accessible to them?—I think it is most desirable to have the court accessible to the people, and that other safeguards against the improper use of the court should be adopted.

13,061. Do you think that the objection that was made to the justices' court—namely, that the justices can be got at, has any application to the county court judges?—Not the slightest.

13,062. What do you say to the other suggestion as to the assizes?—Oh, the assizes would not be at all a convenient tribunal. The lapse of time between the various assizes in itself is an objection; the few centres at which assizes are held is another; and the waiting invariably incident to business at all assizes is a greater one than either.

13,063. What about the cost?—In my capacity of district registrar I tax costs of cases tried at the assizes, and in my capacity of county court registrar I tax costs of cases tried in the county court.

13,064. First of all do you think that if the arrangement was for trial of divorce cases at assizes it would make any substantial diminution in cost as against the present system?—Personally no.

13,065. Nothing would be gained in that way?—I think not.

13,066. And would it make any diminution in delay, or rather lead to greater delay?—Rather lead to greater delay in my view.

13,067. Then you see no benefit which the proposed assize system would have over the present High Court system?—None, taking the case generally. Of course where people were resident in the assize town no doubt it would be a benefit, but speaking generally, none.

13,068. You have some figures showing the difference between the costs of contested assize actions and contested county court actions. Would you just give us those?—Yes, I have taken out the costs of the last 50 cases of each class dealt with in my district registry and court.

13,069. Without selection?—Yes.

13,070. Taken them as they came?—Taken them as they came contested; and the average cost of a contested assize action is 98l.; of a county court action on the highest scale, that is the scale between 50l. and 100l.—is 29l.; and the county court action on the scale between 20l. and 50l. (column B.) is 17l.; that is to say, 29l. and 17l. are the two county court scales as against 98l. in the High Court.

13,071. And taking the one and the other you might have similar questions in both?—Similar questions are dealt with to-day.

13,072. Involving the same questions of law and of fact?—Exactly.

13,073. And so far as the popular opinion is concerned do you find people just as well satisfied with the result in the county courts as in the assize court?—Certainly I should say so as far as my own district is concerned.

13,074. You rather indicate in the preceding paragraph that they are better satisfied. What do you mean by that. "The present arrangements for the disposal of civil business here do not give satisfaction to litigants"?—That is the general experience of solicitors as far as I am aware on most assizes.

13,075. Is that because they are apt to be hustled towards the end?—Yes, there comes a congestion of business and the vacation is coming on.

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[Continued.]

13,076. It is not the fault of the judge; it is unavoidable in the system?—It is because it is impossible to assign beforehand the time that the business will demand in an assize town.

13,077. You give an instance of the cost of proceedings in the Divorce Court that came before the Birmingham County Court within the last few days. The amount of alimony there had been fixed at 350*l.* a year, and the defendant took the necessary steps to have it reduced. He got it reduced to 190*l.* a year, but it cost him 250*l.* to obtain that success?—That was so stated on oath in our court a few days ago.

13,078. Of course, in any such proceedings in the county court the expense would be comparatively a trifle?—Oh, quite a trifle. An investigation of that kind could not incur costs to more than about 5*l.*

13,079. Now, what is your view, whether in the assize court or the county court, as to the desirability, if not the necessity, of the judge having professional assistance—agent or counsel, or both?—On the trial of divorce cases?

13,080. Yes?—Oh, I think it is absolutely essential.

13,081. As between counsel and agent, and agent only, what do you say?—Personally, I do not see the necessity of his having counsel. It is preferable, no doubt.

13,082. In a great many divorce cases, where they are of the simplest nature, do you think it is necessary to have counsel at all?—In an undefended case?

13,083. In an undefended divorce case; an illegitimate child is born to the wife, and the husband wanting to divorce her for adultery; that is a very simple case, is it not?—In an undefended case no I do not see any necessity.

13,084. What about a defended case?—In a defended case I think it is very desirable that the parties should be represented professionally. It is very difficult often for a judge to elicit the facts from the parties of a very poor class in the witness box, and it is a very lengthy process besides.

13,085. I thought in all divorce cases, defended or undefended, you thought that the parties ought to be represented by solicitors; is not that your view?—No; in an undefended case I do not see the necessity; in a defended case, I do.

13,086. But, in undefended cases, is not there a great risk of collusion and a desirability of having somebody answerable to the court who is conducting the case?—Yes.

13,087. I mean personally one has always felt that very strongly. You want somebody you can come down upon if anything is concealed. Do not you think that view makes it desirable to have even undefended cases represented by solicitors or solicitors and counsel?—I confess that is a view that had not occurred to me.

13,088. Now, are you in favour of all county courts having divorce jurisdiction, or of having the courts grouped?—No, I am in favour of having the courts grouped, because, in my view, it is no advantage to the working man to try his case at a place where there are no local advocates available for him.

13,089. Then, if you had them grouped, you would have it arranged so that you would have the services of counsel available in all defended cases?—Practically that would be so, or, at all events, a choice of solicitor advocates. But, in the small towns, if you had it at every county court, there would be no local advocacy available at all. It would be necessary to import it.

13,090. And that means a larger expense than taking witnesses a certain distance to the grouped court?—Yes, that is so.

13,091. And you think the courts having bankruptcy jurisdiction could be conveniently utilised for this purpose?—Yes, that is my view.

13,092. What about the registrar's staff at the large county court, are they in touch with the people generally?—Oh yes, there is an immense amount of work in connection with the actions of poor people which is done for them by the registrar's staff.

13,093. And they come readily to get that assistance?—Oh yes, I may say that over 1,000 applications—interlocutory applications in connection with pending

matters—were prepared for poor people by my staff last year.

13,094. And do the poor people generally know that assistance is available?—It is thoroughly well understood, and at what time it is available.

13,095. Is there any distinction made between plaintiffs and defendants in giving that assistance?—None at all. The illiterate plaintiff or illiterate defendant is equally dealt with.

13,096. How would that be if every county court had jurisdiction?—In the small courts you cannot get that, because the business does not warrant the provision of a staff that can give that assistance.

13,097. What would this apply to in the case of divorce proceedings; what would the assistance come to?—I think it would come to original information as to the grounds upon which an application could be made; the preparation of any interlocutory applications that might be necessary, and assistance in enforcing any order for alimony that might be made. That was the sort of assistance I was referring to.

13,098. Acting to some extent as a poor man's lawyer?—Yes.

13,099. And you do so now?—Yes.

13,100. You state, I see, that there are two considerations that will require to be kept by us in view in framing any procedure that will enable county courts to try divorce cases?—They are that, generally speaking, both men and women of this class have imperfect control over their tempers and hurry into any course of action on the impulse of the moment, without serious consideration. That is, I think, a most important thing; and the other is the consideration that in view of the fact that any maintenance ordered would be payable as a rule by a man who had no assets on which execution could be issued, the difficulty of enforcing regular payments of a weekly sum from such a man is also an important thing to be borne in mind.

13,101. Do not both those considerations rather apply to applications for separation than for divorce. Take the first consideration—the danger of applying on the impulse of the moment; would that be so likely to operate in divorce where the woman would know that she could not go back to her husband, and that all her source of livelihood would be cut off?—Theoretically you would think she would consider it more seriously before applying for divorce, but my view, rather, is that these people do not seriously consider, either the separation or divorce.

13,102. But you would expect that these considerations would operate to some extent at least?—Certainly.

13,103. Now you have an illustration showing the extreme difficulty of enforcing the regular payment without coming to the courts. Do you find in point of fact that there are an enormous number of judgment summonses issued against debtors of the working class?—Oh, yes.

13,104. It has been suggested that the difficulty might be got over in one of two ways, either by ordering payment in the case of separation to an official of the court, or by ordering the employer to pay direct to the wife. Do you think either of these is practicable?—No, I do not think either of them is practicable, for this reason: the order for payment to an official of the court means, necessarily, delay in the money reaching the wife. The payment, presumably, will be a weekly one. The man gets his wages on the Saturday, and it is essential that the wife should have her share of it on that day; by interposing an official of the court you get delay, and at the same time you get no better guarantee for the payment, because he would only have the same means of enforcing the payment or proceeding in the event of nonpayment as the wife.

13,105. Then what about the payment direct by the employer to the wife?—The difficulty of that is, that it is only applicable to the higher class of working man, among whom, presumably, there would be very few applications.

13,106. And do you think there would be a risk in such a case that the employer would dispense with the man's service?—In the case of the unskilled labourer, no doubt.

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[Continued.]

13,107. That would follow?—Yes.

13,108. Now, in coming to separations, what is your view as between the present system of permanent separation and temporary separation. First of all, we have had evidence against separations altogether—that they should be abolished. What do you say to that?—Well, I am afraid that is travelling rather outside what any experience of mine as a county court registrar gives me any right to say anything upon.

13,109. But in your experience, have you found cases where the justice of the case is met, and would only be met by separation—the wife unable to remain with her husband, and not desirous to get a divorce for many conceivable reasons who would be left without any remedy unless by way of separation?—Obviously there must be some cases. The case of the Roman Catholic, of course, was mentioned.

13,110. And if there are to be separations, what is your view as between temporary and permanent?—I should have thought that, in the first instance, they should be temporary.

13,111. For how long?—Six months, I should say.

13,112. At the end of that what would happen?—At the end of that it would be for the wife to decide whether it should be permanent or not, and her decision would in very many cases turn on the point as to whether she had succeeded in obtaining payment of the weekly allowance awarded her.

13,113. At the present moment you cannot get separation before the summary court for adultery; that is so?—Yes.

13,114. Do you think that ought to be a ground in the summary court as it is in the High Court?—I want to give any assistance I can, but may I say again this is quite outside my province.

13,115. That is a good answer, Mr. Whitelock. Now at the end of the six months the wife would have to decide you say. What power would you give her in the way of converting the separation into a divorce at the end of the six months?—I would under no circumstances grant a divorce in the first instance. The order of the court in my view should be an order convertible at the end of six months into a divorce provided the wife was still of opinion that it should be so converted.

13,116. And as you indicate that would in most cases depend a great deal on the question of whether she had been getting payment?—Very largely.

13,117. Do you find that in a great many cases the parties come together again?—We hear that that is so.

13,118. Within a short time?—Within a few months.

13,119. And in some cases that results in a renewed application, but in the majority of cases they seem to settle down?—These applications are of course made to the police court.

13,120. Then it does not come before you?—No.

13,121. Have you any suggestion with regard to the costs that you think would be fair if divorce were open to the poor in the grouped county courts. Have you any suggestion as to what would be a fair cost?—Yes, I think it would be essential to check applications by prescribing a fee for the application. I suggest 1*l.*, and a hearing fee before the case was heard, and I suggest 2*l.* for that.

13,122. That would be 3*l.* in addition to the cost of witnesses?—Yes.

13,123. Then you have a suggestion to make about county court juries?—Yes, I should like to say that I gather it has been suggested here that county court juries stand on some footing of their own and are entirely distinct from any other juries.

13,124. Only by some witnesses?—But there is only one jury panel containing the names of all persons liable to serve on juries and that is available for all courts. Some names are marked S.J. and that means special juror, and they are not exempt from serving on county court juries, and in Birmingham they serve in the ordinary way with common jurors, and in our list some names are taken in alphabetical order from each of the parishes, and in that way you mix up the different people from the different districts.

13,125. And in each jury do you have both townspeople and country people?—Well, our district does not extend very far into the country; they are mostly townspeople.

13,126. Then in the smaller county courts you would have a larger proportion of country jurors?—Yes.

13,127. But do you see that that distinction would make those juries inferior?—No. If jurors are summoned in the way done with us there is no reason why they should be inferior. Of course when they are summoned alphabetically you are liable to the accident of getting half-a-dozen people whose names follow one another who happen to belong to a particular class.

13,128. Have you any view as to whether divorce cases, whether in the county court or elsewhere, should be tried by a jury?—Personally I think it is desirable that they should not. I think they rather belong to the class of case that it is desirable as raising the probability of prejudice to keep out of the hands of a jury.

13,129. Then, lastly, apart from opinion as to alterations of the present grounds of divorce, you have had certain cases of undoubted hardship come before you. You instance, first of all, the deserted wife whose husband has gone to the colonies leaving her with a young family to support?—Yes.

13,130. Is that the case of a man who ceases communication with his wife and sends nothing for her support or the children's?—Yes, when you ask the wife where the husband is the answer is "I do not know, I have not seen him for years."

13,131. He has done everything he can to break the tie?—Yes.

13,132. It is only a nominal tie that remains?—Yes.

13,133. Then the second case you mention is a working man whose wife has taken to drink and runs him heavily into debt besides pawning everything available in the home. Are there many such cases in your district?—Well such cases frequently come before me, but I am most anxious to avoid giving the impression that the Midlands are peopled with that class of person.

13,134. Then the third case. The last one you mention is the case of a man who is a confirmed drunkard and has been so long out of work as to be unemployable and is supported permanently by the earnings of his wife and children. He is a loafer and does nothing?—Yes, a case of which we see two or three amongst every batch of judgment summonses.

13,135. Supposing the grounds of divorce were extended as has been proposed, let us say of desertion, making desertion a cause, do you think there would be any large increase in the number of cases after it had settled down?—Yes, I think extending divorce by the addition of desertion as a ground would substantially increase the number of applications.

13,136. As compared with any of the other proposals that have been made, cruelty, crime, insanity, or drunkenness, do you think that desertion would account for comparatively the largest number?—Yes.

13,137. (Sir William Anson.) Mr. Whitelock, you have no practical experience of separation orders?—No.

13,138. Your knowledge is confined to the county court?—Yes, that is so.

13,139. Do you think that the county courts as at present constituted might exercise a divorce jurisdiction?—Yes.

13,140. Each individual county court or group?—The courts having bankruptcy jurisdiction I suggest, that is to say, not the small village courts.

13,141. But, assuming you assigned divorce jurisdiction to the county courts, would you give them also jurisdiction over the separation orders made under the Act of 1895?—No, not unless the grounds of divorce are enlarged to include the present grounds of separation under that Act. If so, it would be, I am afraid, necessary to do so.

13,142. Then would you say that, a separation order having been made by a magistrate—by the ordinary justices or a stipendiary magistrate, if a further application was made, with or without fresh

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[Continued.]

evidence, for a divorce, that that should go on to the county court?—That is my view, yes.

13,143. Then the county court would have to deal with a case one might almost say part heard. The original proceedings having been brought before the stipendiary magistrate, the parties not having come together, one of them applies for a divorce, the matter would be relegated to the county court which had not heard the original case?—I am afraid I have not quite grasped. Are you contemplating the case of the law remaining as it is, or an alteration of the law by which a divorce could be granted on the grounds on which separation is granted?

13,144. I am contemplating an extension of the causes of divorce?—A separation order made say on the ground of desertion or habitual cruelty, and some other cause supervening or the parties not having come together, one applies for a divorce; would you then say that should go on to the county court?—Yes, I would.

13,145. There would be some inconvenience about it?—Yes.

13,146. The judge might be in some difficulty, not having heard the first case?—Well, under those circumstances, if all he had to do was to decide on the facts as to which the stipendiary or other magistrate had already decided, it would, of course, be impracticable for the case to be tried again. If divorce is to be granted on grounds for which at present a separation is granted, and the fact of the separation is to be used as evidence of the facts which would justify a divorce, then it would be unnecessary practically for the county court to go into it at all.

13,147. Then you would extend the jurisdiction to the stipendiary magistrate?—No, I think not; I think it would be simpler for the county court judge to act, accepting the order of the magistrate as evidence of the facts on which it had been made.

13,148. But, under any circumstances, you would keep the matter of separation to the magistrate and divorce to the county court?—Yes.

13,149. Would you extend the grounds of divorce in any direction. Would you add to the causes which justify a dissolution of marriage?—I have rather avoided expressing any opinion, on the ground that there is nothing in my experience which justifies my doing so.

13,150. And you would have no fear that an increase in the number of courts which dealt with the question of the dissolution of marriage might destroy the uniformity of decisions which has hitherto prevailed where we have only had one court to deal with it?—Personally, I should have none. They would be subject to an appeal.

13,151. (*Judge Tindal Atkinson.*) Just a question about the separation order leading to divorce which I should like to understand. We assume a case in which the wife has obtained a separation order against the husband for desertion. You think the wife in that case, if the separation order has lasted for a certain time, should be entitled to treat that matter of desertion in point of law as a matter on which to proceed for divorce. If there is a separation order now, and the husband is therefore compelled to be separate, that does not constitute desertion of which the wife can take any advantage, because she is separated by the order. Suppose that order is altered, and a separation order having been made it is treated as desertion, then it might be a case in which the wife, if desertion was made a ground of divorce, should apply for divorce. If that happened I understand you to mean, then the court having jurisdiction to grant a divorce should be the county courts?—Yes.

13,152. And with regard to the evidence on which the original separation was obtained, you do not suggest that the judge should re-try that but act upon the certificate of the justices or the magistrate who has granted the separation order?—That is what I say.

13,153. Now about the parties appearing in person. Supposing the doctrine of recrimination was abolished, so that the question of collusion could in no way arise and was a matter of indifference, then there would be no

objection in your opinion to the parties appearing before the judge in person without a solicitor?—No, none.

13,154. And I suppose you have had sufficient experience in the county court to know that in a great number of the cases that are tried before a county court judge where they appear in person, that the county court judge acts as advocate for both sides, examines all the witnesses and cross-examines them, and ultimately gives the decision?—Yes, I am doing that every day myself. All cases in Birmingham up to 2l. are tried by one of us; the judge never touches those cases.

13,155. So the judge or registrar is acting as a friendly arbitrator between the parties in getting at the truth?—Yes.

13,156. There would be no objection to applying that same system to divorce cases would there?—No, but it is a great assistance to the judge to have parties professionally represented; it shortens cases.

13,157. No doubt; but the only point that requires serious consideration is whether it is to be made compulsory. If the jurisdiction is extended to a tribunal which enables the poorer class to get into it and obtain a remedy of divorce, should it be made compulsory that the petitioner should appear by a solicitor and when it is contested that both parties should attend by a solicitor. Would you make it compulsory?—No; with the exception of the point about collusion I do not see the necessity for having the professional representation, especially in undefended cases.

13,158. Therefore, if you remove the danger of collusion by removing the doctrine of recrimination which would put an end to the danger of collusion, then you would not make it compulsory?—Oh no; what I mentioned about the assistance to be given by the county court staff of course dealt with that.

13,159. Now, with reference to the assizes, I should like your opinion. It is suggested, and has been suggested by more than one witness, that supposing you could have a system by which the parties could sue *in formâ pauperis*, so as to be relieved of the payment of the fees, to have solicitors and counsel allocated at the assizes to parties, then it is suggested that the assizes would be the proper tribunal and not the county courts. In your opinion, even with that advantage would the assizes be a good tribunal?—Personally, I think certainly not. I think such cases can be dealt with much more carefully, as well as more expeditiously, in the county court, and with less delay and less waiting.

13,160. And the party who had to go to the assizes under those conditions being saved the fees, is there any reason in your opinion why the Treasury should lose the fees which they could get if the parties resorted to the county courts. Because you suggest 3l. for the Treasury fees. Is there any reason why the Treasury should lose that?—No, I cannot see any.

13,161. Now about the grouping of the courts. In every county court district, however remote it may be, is it not the fact that the registrar is generally the principal solicitor in the district?—That is so in the smaller courts, yes.

13,162. And he is generally a man of position, and very often clerk to the justices at the same time? Would not that fact be sufficient to enable the poorer class to get the assistance they want at the registry?—Oh, yes.

13,163. I only mean this: there may be this matter to be considered. You may group the places for the purpose of trial, but it is rather important to the poorer people who want to commence these proceedings and carry on their interlocutory applications, that they should do so at the nearest court?—That was my idea, that they would be dealt with as they are under the Extended Jurisdiction Act.

13,164. Commence in the local courts?—Yes, that is essential.

13,165. And the registry would carry on all the necessary interlocutory applications, and then transfer it for trial to one of the grouped towns?—Yes.

13,166. With regard to Birmingham; I think you have two judges at Birmingham?—Yes.

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[Continued.]

13,167. Are you well abreast of your work in Birmingham?—Oh, yes, we have no arrears.

13,168. Is there any likelihood of there being any congestion at Birmingham which would prevent the judges there dealing with divorce?—Not the slightest.

13,169. From what you know, is there any great congestion in the county courts at large?—I should have said outside London not very much. There are some places occasionally where one hears about people being unable to get on, but anywhere around the Midlands I should say not.

13,170. You say that is confined to a limited number of county courts. I daresay you find at Birmingham, as every other judge finds, that the litigation is very much like the traffic in the streets. You get a great deal at one time and very little at another?—That is so.

13,171. So that a court may be congested at one time, but if you take the whole course of the year there is no congestion at all?—That is so. There are times, of course, when the judge cannot get through the work, and under those circumstances the parties have the alternative of having the case adjourned till another day or tried by one of the registrars, and the latter is the course adopted as a rule. I tried 70 last year for the judge.

13,172. Do you see any difficulty in the registrars trying amounts up to 5*l.*?—Not the slightest.

13,173. Would that be resented by the public?—I am certain it would not. We are trying such cases every day by the consent of the litigants themselves.

13,174. Would that give the county court judges all over the country much more time?—I should say beyond all question.

13,175. And if there should be any remodelling of the law for imprisonment for debt in this country there would be a considerable saving?—A very large saving. That would operate in two ways. Of course it would do away with a very large number of judgment summonses, of which we have 10,000 heard every year in Birmingham, which occupies a good part of the judge's time, and it would put an end practically to the extraordinary industrial credit system which provides the bulk of the county court work.

13,176. (*Sir William Anson.*) There is a question I did not make clear and I should like to put it again.

We had a suggestion put before us yesterday for an enlargement of the grounds of divorce in this way, that the stipendiary magistrate should grant an order and the parties should come six months after, with nothing else intervening; that he should say, if asked for a divorce, "Having regard to the grounds I granted you a separation on, and as your marriage is a failure and you have not come together again, I will grant a divorce." Would not there be some inconvenience in the division of the case practically into two chapters?—Yes, there would be, but in my view it would be less than the inconvenience of both the stipendiary magistrates and the county court judges dealing with the question of divorce. Will you allow me to say one thing more? Your attention has, no doubt, been called to it, but at present under a separation the woman in enforcing any alimony order stands in a better position than she does under the existing Divorce Act for enforcing any maintenance, or would presumably if that were in the county court. Has attention been called to that?

13,177. (*Mr. Brierley.*) Why do you say that?—Oh, because under a separation the order is enforceable by imprisonment without any evidence of means.

(*Mr. Brierley.*) That has been alluded to by one or two witnesses.

13,178. (*Lord Guthrie.*) You talked about the working classes. What kind of limit of income or capital would you suggest for those who are to have the advantage of the county court divorce jurisdiction?—The highest limit of income would in my view be 3*l.* per week.

13,179. Would the addition of what you would contemplate as the divorce work for the county courts entail any substantial increase of your staff of clerks?—That depends entirely upon whether the grounds of divorce are extended or not.

13,180. And the extent of the increase of the number of cases?—My present staff is 63, and assuming the divorce jurisdiction were granted to the county courts on existing lines, I should not contemplate that any addition to it would be necessary.

13,181. And it would depend on what additional causes, if any, were enacted as to whether there would be any increase, and if so, how much?—Yes.

(*Lord Guthrie.*) Thank you, Mr. Whitelock.

Adjourned.

Winchester House, St. James's Square, London, S.W.

TWENTIETH DAY.

Wednesday, 25th May 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The Right Hon. the EARL OF DERBY, G.V.C.O., C.B.
The LADY FRANCES BALFOUR.
The Hon. LORD GUTHRIE.
Sir WILLIAM R. ANSON, Bart., M.P.

Sir LEWIS T. DIBDIN, D.C.L.
Sir RUFUS D. ISAACS, K.C., M.P. (*Solicitor-General*).
His Honour Judge TINDAL ATKINSON.
EDGAR BRIERLEY, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

(*Chairman.*) There is a matter I want to bring before you which I think ought to be passed as a resolution. I have framed this: "The Commissioners appointed by His late Majesty to inquire into the Law of Divorce and Matrimonial Causes desire to express their sense of the great loss which the United Kingdom and the British Empire beyond the Seas have sustained by the death of His late Most Gracious Majesty King Edward VII. The

"Commissioners wish most respectfully to convey their heartfelt sympathy and condolence to Their Majesties the King and Queen and the Queen Mother and the Members of the Royal Family in the heavy affliction which has fallen upon them." If you approve I propose to send that to the Home Secretary with this letter (*reading letter*). What do you think?

(*Sir William Anson.*) I quite agree.

(The Commissioners present concurred.)

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His Honour Judge R. WOODFALL.

[Continued.]

His Honour Judge ROBERT WOODFALL called and examined.

13,182. (*Chairman.*) You are one of the members of the county court bench. Will you tell the Commissioners where your court sits?—I was appointed in 1898 to the South Devon district; that included the large towns of Plymouth and Exeter. In 1901 I was transferred to Westminster, where I am now.

13,183. Westminster is a very busy court?—I think Westminster is a very busy court, and from the returns it probably does the largest amount of work of any county court in the Kingdom in which there is a single judge.

13,184. Have you been good enough to consider the subject of conferring jurisdiction upon county courts in divorce matters and other matrimonial causes?—Yes, from certain points of view. The first thing it seems to me is, having regard to the evidence which has been given, that has been the basis of my consideration, that if the jurisdiction is given it cannot be limited in any way. I think it cannot be in any way localised.

13,185. Are you speaking of limitation in courts or in the persons who come?—In either way. I should neither limit it to certain courts, nor in respect of the persons who desire to avail themselves of the jurisdiction. If jurisdiction is given it seems to me it ought to be given to the county court generally, and all persons who wish to have their suits heard in the county court ought to have a right to be able to do so, I think.

13,186. Would you include those to whom money is not an important consideration, and who are interested in important cases?—Yes. My idea is that I should allow anyone who desired to bring a suit for divorce in the county court, always assuming the principle of conferring the jurisdiction is conceded. If it is conceded, I see nothing logical in drawing any limitation of any kind.

13,187. You would include a right of removal on the part of the opponent?—That is the sole restriction I should impose. I should allow any party other than the petitioner who has started the suit in the county court, in a fit case, to have the absolute right to remove it to be tried in the High Court Division.

13,188. With regard to courts, you said not limited as to any particular court?—No. It seems to me if there is a need for having more courts in which suits for divorce can be heard, the need is in no way geographical. In the case of bankruptcy some county courts have jurisdiction; generally in the country they have jurisdiction in bankruptcy, but not in London. For that there seems to be some reason. In the same way some county courts have jurisdiction in Admiralty and some have not. For that there is some reason, but it seems to me there is no reason at all, if you are going to give a jurisdiction such as divorce jurisdiction, nor logic, in limiting it in any way.

13,189. One of the points made is that if you do that it leaves too many persons to administer the jurisdiction, and therefore may be productive of want of uniformity of decision. What do you consider about that?—It seems to me that would apply to all the jurisdiction which the county court has now. I will take an instance with regard to workmen's compensation. There is a great diversity of view; and there must be, it seems to me, where there are 55 judges administering the law; they must take different views—so many men, so many sentiments.

13,190. To sum up that part, you would give the jurisdiction to the county courts unlimited as regards person or court, but subject to the right of removal where it was considered desirable that the case should be heard in the High Court?—Yes, that is my view, but I do not say that I would give the county court jurisdiction in divorce: I say subject to that principle being conceded.

13,191. That is what made me summarise it, to see whether I had it right. I think you were secretary to the late Lord St. Helier?—Yes.

13,192. For a number of years?—When he was President I was the official secretary.

13,193. Your acquaintance with the Divorce Division is greater than that of most people?—Yes, I had some, and I also had a certain amount of practice in the Divorce Court.

13,194. I should like to ascertain your view as to whether it is desirable or not that jurisdiction should be given to the county courts?—I certainly feel a great deal of diffidence in expressing a view. It seems to me a very large subject, and I do not think I should presume to express a view, but I will say this, it seems to me rather strange at this time of day that a man in Yorkshire who desires to get a divorce should be obliged to come up to London, and the principle of later years has been to decentralise the administration of the law.

13,195. You feel the difficulty; but, assuming the jurisdiction is given, you have already stated on what conditions it should be given?—Yes. I should like to add this. In reading the reports of the evidence which has been given here in the newspapers I have seen one or two suggestions that it should be limited to persons whose income is 160*l.* a year, and so on. It seems to me that that is quite illogical. How can you limit it to an income of 160*l.* year? Why should it be more? I think the law costs of 50*l.* or 60*l.* or 70*l.* would bear more hardly upon a clerk with 500*l.* year than on an artisan earning 3*l.* a week. It is almost impossible to draw any limitation on income.

13,196. I gather from some witnesses that that suggestion of limitation would be based upon the general desirability of keeping the divorce work in the hands of the most experienced judge in London, but meeting the demand in the country, where people are poorer, by giving jurisdiction in cases that could not afford to come to London. That seems to be the view presented?—Who is to decide in any case whether the person is able to come to London or not? It is just as difficult, and I am sure all the county court judges have experienced this difficulty: when an application is made to them by a person to be allowed to sue *in formâ pauperis* certain allegations are made, and we are sometimes obliged to believe them, but I am certain a great many persons obtain leave to sue *in formâ pauperis* who could well afford to pay the cost.

13,197. Does the procedure *in formâ pauperis* apply in the county court?—Yes. We have the power that we can permit a person to enter a plaint without paying fees: we can remit all court fees.

13,198. That is the extent to which you can go?—I think that would be the extent, but, of course, it is a very substantial thing.

13,199. You have no power of assigning a solicitor?—None whatever.

13,200. I think you very clearly put the points upon which I have already asked you. May I now proceed with your proof. You refer to the description of the county court as the poor man's court being erroneous. What do you wish to say about that?—I think it is in one sense. The county court is the poor man's court, inasmuch as the poor man goes where the thing is cheapest, and as the costs are less than in the High Court, persons go there. In that sense it is the poor man's court, but the county court has changed in the last 25 years, and to label it the poor man's court is quite misleading. It is always put in the forefront of any opposition to an improvement in the jurisdiction of the county court by persons who have an interest in opposing an extension of jurisdiction, but it is quite misleading. In 1846, when the present county court was brought into being, no doubt it was, as the preamble of the Act states, a court for the collection of small debts, but in the last 25 or 30 years some 130 Acts of Parliament have thrown on the county court the most important jurisdiction, and it is by no means only the poor who come to the court. Very large and important questions are litigated there constantly.

13,201. We have had that pointed out as regards bankruptcy, Admiralty, workmen's compensation, and numerous classes of cases, many of which come under special Acts of Parliament. You were referring to

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[Continued.]

that?—Yes, and the ordinary jurisdiction of the court has been extended to 100l. from 50l., and every chamber of commerce in the country desires to see a very much larger extension.

13,202. I would like to go back to a view you expressed about limited jurisdiction in divorce. You are aware, no doubt, that an attempt to give unlimited jurisdiction, subject to a right of removal, was proposed last year in ordinary civil work, and rejected by the House of Lords?—Yes.

13,203. As a practical matter, do you think it would be likely, assuming jurisdiction were given to the county courts, that it would be allowed to be of a limited character?—I can only say what I think is the principle that ought to be applied; whether Parliament will recognise that or not, it seems to me I cannot express an opinion.

13,204. That is a difficulty that those who have to deal with this matter practically will have to consider some day?—I can say I see neither logic nor advantage, if the jurisdiction is given, in imposing any limits except the one of removal, to which I have referred.

13,205. You proceed to mention some difficulties if the working classes only are considered?—Yes, because it seems to me, in the evidence which has been given, to have been considered that this is going to be done for the working classes, and in my opinion the working classes would form a very small proportion of the persons who would avail themselves of the jurisdiction of the county court to grant divorce. I do not think that there is a demand among the working classes for facilities for obtaining divorce.

13,206. You think it would be somewhat above that class?—Certainly, in the bulk of the work.

13,207. What are the difficulties that have presented themselves to your mind about the working classes?—First, I do not think there is any great demand on the part of the working classes, and, secondly, this struck me with regard to these interlocutory matters in a divorce suit, which would be very familiar to your Lordship, such as applications for alimony *pendente lite* for the wife—how is a judge to deal with that? What order can he make on weekly wages if he is a working man earning 30s. a week?

13,208. Will he not be able to make the same kind of order that a magistrate makes when he is applied to for a separation order?—Yes, but there again I have not had much experience in the working of separation orders, although I have heard this, and I believe it to be a fact, that when magistrates make the order for the payment to the wife, the wives continually feel the very greatest difficulty in enforcing the order.

13,209. Would this be a serious matter, because, assuming the jurisdiction were given, the cases ought to be disposed of within a month?—Yes.

13,210. *Pendente lite* comes from a time when suits were a long time coming on, and it was necessary to make some provision, but with rapid hearing that is not so important?—A month to six weeks, I should think, but still the wife and children must be supported during that time, and where they are living from hand to mouth on weekly wages there is very great difficulty. It struck me, on thinking it over, how could an order be made, and, if made, how enforced, for alimony *pendente lite*, even in such a limited period.

13,211. That is a difficulty that would exist whatever tribunal you had access to?—Yes, that is so. I only draw attention to these points from the point of view which I have said: it seems to me that the evidence has gone on the basis that this is only for the working classes.

13,212. There is another difficulty which you mention?—Yes, and I think a very great difficulty, that here we get a working man living in the country in a small two-roomed cottage. How is the law as to the presumption of condonation going to be dealt with?

13,213. That is on the assumption that the people are living together?—But they must.

13,214. Not always. There are numerous cases of desertion?—Yes.

13,215. We have had I do not know how many samples given by Judge Granger yesterday where a woman was living with a lodger elsewhere, or the man had gone to America, and so on?—There are those very flagrant instances, but, on the other hand, there are the cases in which the husband and wife are living together, and either party may have a good ground for divorce, and yet they are obliged to go on living in this very limited habitation.

13,216. I do not see how that bears on what court they should go to?—I am only instancing these difficulties from the aspect which seems to have been taken, that it is only to be done for the working classes. My view is that the jurisdiction would be availed of by a very much higher class.

13,217. You point out about the custody of children, but that is a difficulty wherever it is dealt with?—That would be a very great difficulty. Of course that is dealt with under 41 Viet., that is, the separation orders. The magistrate has power when he grants a separation order to make an order as to the custody of the children.

13,218. There is no more difficulty if the court had divorce jurisdiction?—No.

13,219. You suggest a restriction as to residence?—Yes, for this reason. When there are 55 judges administering the law it is clear that they must take different views of the evidence justifying the granting of a divorce, and I think suitors would seek to bring cases before a particular judge who was supposed to be easily persuaded. I think it must be so, and would be so. That being so, if the jurisdiction is conceded, and I preface everything I say by that, I would render that impossible by saying persons should not bring a suit in any county court in a district in which they have not resided for a certain time. I suggest two years, but that is only a suggestion. I would make an enforced time of residence, and not leave the court open to any foreigner who comes in to get a divorce.

13,220. Might I suggest something more forcible than that? There would be nothing in that suggestion to prevent the person going to reside for the two years in the more facile jurisdiction. May I suggest if it were confined to a suit instituted in the district where the matrimonial home had been?—Yes, that would meet the point.

(Sir Lewis Dibdin.) For two years?

(Chairman.) It would not make any difference.

(Sir Lewis Dibdin.) It would open the door to collusion at once.

(Chairman.) Perhaps you will follow it out. I wanted to suggest something which would make it more likely to avoid something.

(Sir Lewis Dibdin.) I thought you meant the permanent matrimonial residence.

(Chairman.) I mean where they have matrimonially resided in the ordinary course of events.

13,221. (Sir Lewis Dibdin.) Granted they were going to collude, they would combine to go to a district where the judge was facile?—Yes.

13,222. (Chairman.) That is a further point. Your point is that the jurisdiction should be exercised when the parties have really lived in the proper way, so that there should be no facility for coming to a court where they might think it was easier to get a divorce than elsewhere?—Yes.

13,223. Whether both did it or one did it?—That is my point, that they should not seek out a certain judge. That, I think, is to be prevented by making an enforced residence in the district for a certain time. I only suggest two years.

13,224. Then you proceed with the point about hasty proceedings?—Yes, because it seems to me that divorce is such a serious thing; it is not like ordinary litigation, it is irrevocable. If you are going to make it too cheap and too easy, in an ordinary matrimonial quarrel in a country district (I think in London people are too busy) there will be solicitors who would be ready to take it up, and parties would rush into court from an ordinary quarrel, which, if there were not great facilities, would be passed over. My view is that I should not make it too easy and too cheap.

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13,225. Assuming that jurisdiction were given to county courts, in what way would you meet those two points?—That is very difficult indeed. I have tried to think it out. It seems to me very difficult, but it could always be done by rules. All I can say is this, that rules making it not too easy and not too cheap need not bear hardly on poor cases, if power is given to the judge in fitting cases to order the fees to be repaid or a portion of them refunded, but I should put obstacles at the outset so that persons should be obliged to consider before they rush into court.

13,226. I should like to get the nature of the obstacles to which you refer?—I think that could be done by rules, but I am not able to suggest at present how such rules should be framed. I am quite certain that a great many cases are brought in county courts, especially in the country, simply from motives of anger, want of consideration, and very often from mere spite. I have had cases before me where the cause of action has been most unsubstantial and frivolous, but I have heard the case and come to the conclusion that the persons have brought the case and come into court simply because they were able to say defamatory things of neighbours in court with impunity, which they dare not say outside.

13,227. I daresay you know that in the High Court the petitioner must swear to the truth of the petition, so far as their own knowledge is concerned actually, and also so far as their knowledge is derived from information obtained to the best of their belief. Would it assist your view about obstacles if it was necessary for that to be supported by an affidavit from the solicitor in each case so as to make it reasonably certain. I ask you that because you proceed to say further on that you think solicitors should be made officers of the county court as well as of the High Court?—I said that because that would give the county court more control over solicitors than it has at present.

13,228. Would that present an idea of an obstacle which would to some extent meet hasty and unmeritorious proceedings?—I hardly think so, for this reason, the petitioner would swear his affidavit, but he could not be corroborated by the solicitor, who could only swear what he was informed.

13,229. The reason I am putting this question is because I have had to consider that point in the High Court—whether it should not be supported by an affidavit by the solicitor that he has investigated the case, and that, so far as he is able to judge from the facts laid before him, there is a good ground for a case?—It seems to me that would be putting a very heavy burden and risk on a solicitor.

13,230. Do you think so?—Yes, I think so. If a counsel gave such an opinion no proceedings could be taken against him for negligence, but it might lay the solicitor open to such a liability. It would lay a very heavy burden on a solicitor.

13,231. I have had this point brought up in suits instituted in the High Court in which it has been said there was no reasonable foundation for them, and whatever tribunal exists you may be met with that. Is there anything else you could suggest as a means of checking hasty and unmeritorious suits altogether? I had one case many years ago in which some one had been actually brought over from South America to answer a charge, which was absolutely unsupported when the case came on, and it was suggested at the time by some of the leading practitioners that something in the nature of a preliminary investigation might take place before a case was allowed to go on. It is very difficult to arrange, but the idea occurred to me that some check might be added if there was some evidence that it had been investigated by a professional man, and that he thought there was a good case, which is analogous to *in formâ pauperis* proceedings in the High Court, where counsel's opinion has to be taken that there is a reasonable case. However, if you have not thought it out, it is rather a matter for discussion than for evidence?—Of course there is something also in the appeals to the House of Lords. Counsel have to sign the petition of appeal.

13,232. The point is you would like to see some rules and some practice which would put a check upon hasty and improper proceedings being taken?—Yes, wholly unmeritorious proceedings, and for the reason I say that the damage done by those proceedings might be very deep and irreparable. There is that distinction between this kind of litigation and any other kind of litigation.

13,233. Then, as to procedure, you have some suggestions about that. Will you tell us what are your views?—Yes. If the jurisdiction is given to the court I think provision should be made that parties might have special juries.

13,234. Would you give them a jury at all? Do you think that it is an advisable tribunal in this class of case?—No, personally I would not in this class of case. I myself like having juries in ordinary cases. I know some judges do not like juries, but I get very good juries at Westminster.

13,235. Why would not you have them in this class of case?—You would get local juries who were infected with local prejudice, and who had probably discussed the matrimonial condition of affairs between husband and wife in their clubs.

13,236. You prefer to leave it to the judge?—I do not think that juries would be a safe tribunal.

13,237. If a jury were considered proper you would like to have a special jury, if necessary?—Yes. I think if persons who avail themselves of the jurisdiction are to have special juries and could afford to pay for them, they should have them. At present we have no such right.

13,238. You have said that solicitors ought to be officers of the court?—Yes. The other point on procedure I ventured to bring forward was that I think there ought to be pleadings and particulars, just as there are in the Divorce Division of the High Court now. In the county court now we have no pleadings, and a man brings an action and the defendant is at large to raise any defence.

13,239. Could you assist me over a difficulty upon that which I have had to prevent the abuse of the application for particulars. I daresay you have seen enough of the practice to know that it is very frequently oppressive?—Yes, but I think that it must be left to the ability of the judge to discountenance such applications.

13,240. Then you proceed to discuss whether the courts, if they had this jurisdiction, would, as now organised, have time to dispose of the work?—May I say upon the last point that I remember the late Mr. Justice Mathew, upon an application for further and better particulars, refused them and said, "Further and better you call them, further because they are further off the point, and better because you are better without them." That is how he dealt with it.

13,241. Then you proceed to discuss the question whether the courts as now organised have time to dispose of such work as would be given to them?—Yes, that is a very important question, and I can only speak for my own court. I have very heavy work, and we are abreast of the work. Practically, we have no arrears, but in the country districts where they sit late there are arrears. At Westminster I should have no more time to spare. It takes me all my time to keep the work down. As the court is at present organised I do not think it would have time.

13,242. Can you tell us how many days in the year you sit at Westminster?—The average is 190. I sit five days a week.

13,243. (Judge Tindal Atkinson.) What number circuit?—44.

13,244. (Sir William Anson.) I should like to ask you about the hours. Are they late sittings?—No, I will not sit late. I think if I give them six hours work a day, or over if necessary to finish a case, I have done fairly well.

13,245. (Chairman.) Your suggestion is that if the jurisdiction of the registrars were enlarged there would be more time at the disposal of the judge. That point was mentioned in the late Bill?—Yes, the jurisdiction of the registrars at present is quite

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anomalous, and it ought to be enlarged; there is no reason why it should not be enlarged. If it was enlarged to give them jurisdiction to dispose of cases between 5*l.* and 10*l.*—now they are limited to 2*l.* and only in contract—sending other cases to the judge as they thought fit, it would give the judge a great deal more time.

13,246. Do you agree with the views of the Committee as to giving them jurisdiction?—Yes, as far as I remember them now, I should.

13,247. It was in that direction?—Yes. May I give an instance of what I mean? The other day I had a case before me which was whether a man was to pay 2*l.* for a waterproof coat, and the registrar could not deal with it because it was over 2*l.*; it was for 2*l.* 5*s.*, so it came before me; the parties squabbled for an hour and a quarter and in the meantime two cases, one involving 300*l.* and the other 100*l.*, had to be adjourned. It was a sheer waste of one and a quarter hours. If the registrar could have dealt with that I would have had that one and a quarter hours to deal with real work.

13,248. The other suggestion is about the process of judgment summons and committal orders. If they were abolished or minimised there would be more time?—Yes. As far as the second heading goes, if the registrar's jurisdiction was enlarged there would be more time, I think, at the disposal of the judge. If the other alternative were carried out, the proposal to abolish judgment summons and committal order, there would be sufficient time. I have no doubt about that in my own mind, because I think it would put an end to so much of the litigation at present in the county court. I do not think it will be carried into law. What will happen if it is carried into law will be this. History will repeat itself. In 1848, I think I am right, there was an Act passed abolishing, practically the same thing, imprisonment on mesne process for small debts, just what they want to do now, but there was such an outcry over the whole country from all the traders that they came up from all parts of the country. They actually came up in deputations, I think in 1848 or 1849, to London. There were deputations to London from shopkeepers and small traders, and they had so much influence and put their views with such strength, that the following year the Act was repealed. My own opinion is that the process of judgment summons and committal order will never be entirely abolished. If it is abolished, then the court will have time to deal with divorce work.

13,249. The next point is dealing with a doubt some witnesses have expressed as to the capacity of the judges to deal with these cases?—I must say that I felt some resentment at that evidence. I think it was given by one of the pundits from the Divorce Court, but I rather felt resentment at it when I considered what was the work the county court judges did now. There is thrown on the judges now matters which involve considerations of fact and law as complicated, and decisions as difficult and anxious, as any which can arise in a suit for divorce. In divorce cases the facts are not difficult, and the law of divorce is very easy.

13,250. You have 130 Acts of Parliament to cope with at present?—Yes.

13,251. Which involve difficult points?—As far as the decision goes, the granting of a decree of divorce, serious as it is, is not more anxious than deciding a case under the Workmen's Compensation Act, when you get some man injured for life and mutilated, and you have to decide against him that he has got no case. It is not more anxious to grant a decree in a divorce case.

13,252. The next point is as to separation orders under the Married Women's Act. You are dealing with that, I think, on the question of the court having the time and the capacity to deal with it if it were transferred to the county court?—I think it should not be transferred to the county courts. The county court has no machinery for criminal work, and could not assimilate it with civil work. It seems to me the idea of putting on a civil court the duty of hearing a number of charges of assault, on the chance that one should be

of an aggravated nature within section 4 of 41 Vict. c. 19, is preposterous.

13,253. The last point in your proof is about the publication of reports of divorce and matrimonial causes?—I do not see the slightest use in reporting them, and I do see the great deal of mischief in permitting the evidence given in the divorce suits to be published in detail. On the other hand, where the divorce suit results in a decree being pronounced and the status of the parties altered, I think some gazetting of the fact is essential.

13,254. (Sir William Anson.) With regard to this question of time, would the county court judges be equally able to undertake this jurisdiction, supposing the grounds of divorce, as has been suggested to us, were largely increased, that is to say, if they have to consider whether lunacy or habitual drunkenness, or cruelty, or desertion under various conditions, was a ground for divorce as well as the simple question of adultery?—Do you ask me to give my opinion whether I think those grounds ought to be grounds for a divorce?

13,255. Whether, if the county court judge had to exercise his discretion on all those different grounds, as well as on the simple question of adultery, that would affect your view that the work could be done in the time now available for the county court judges' work?—I do not think that would affect the view I have taken, whatever may be the ground of the decree, it simply will be one case in the list—a divorce case in the list. If I rightly apprehend your question, I do not think it has a bearing on the view I have taken, that in the events I have stated there would be time to deal with the work.

13,256. This greater variety of matters for consideration would not affect the actual expenditure of time?—I do not think so.

13,257. Would it not, nevertheless, affect uniformity of decision?—I think that is very likely, but that must be so. It was even so, I remember, in the old days, where there were only two judges in divorce. We knew perfectly well—I will not mention the names of the judges—that one judge would grant a decree more easily than the other. If you have it with two judges, what would you have with 55. You must have that divergence of view; it is impossible to prevent it. At the same time, they are 55 lawyers, and are generally deciding on the right apprehension of the principle of law involved; but, still, different men will take a different view of facts.

13,258. That has been suggested in the evidence given before us; not only will the number of persons who might differ be multiplied, but the number of the subjects on which they might differ would be largely multiplied?—Yes, I think that is so, and I think it must be so, but it is impossible to prevent it. It was said in the course of the evidence here—I forget the name of the witness, but it was said at an early sitting of the Commission—that the great disadvantage of divorce law is, that there would be no uniformity of decision, because they could not confer one with another, and the Bar of England would be dispersed over the country, and it would tend to the detriment of the Bar of England. All I can say is, in answer to that, that every single thing that has been urged before this Commission, and at different stages of the proposition to enlarge the jurisdiction of the county court, was said by Lord Lyndhurst in 1846, because Lord Lyndhurst was a most bitter opponent of the county court. Lord Lyndhurst's predictions have been falsified.

13,259. Your opinion is that this could be done. Is your opinion also that it should be done, that the jurisdiction should be enlarged as has been suggested?—That is a question I asked the Chairman not to press, because it is such a very large question. It would be almost presumption for me to say whether divorce should be made more facile or not.

13,260. Under no circumstances would you transfer the separation jurisdiction which is now exercised by magistrates?—Under no circumstances whatever, nor does it seem to me that there is any demand or any need for it. It is a class of jurisdiction wholly distinct

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from that of a civil court, and could not be exercised by a civil court. There is no machinery for it.

13,261. As to preventing people rushing hurriedly into divorce proceedings, could you stop that by requiring a notice?—A notice to whom?

13,262. An interval between the notice given of the action and the time when it could be heard?—I think that may have some effect, but the mischief would be done when the first step is taken.

13,263. Or by prepayment of fees?—That would be a great deterrent. If it was once made a question of the pocket, they would consider a good deal before they made a quarrel irrevocable by beginning divorce proceedings.

13,264. You think that a preliminary investigation would not work?—It is very difficult, I think. I think they have some system in Germany in ordinary civil suits of a preliminary investigation. I do not want to say anything more about it, because I have not looked it up with sufficient care to speak about it this morning; but I think they have some system which is in the nature of a preliminary investigation before persons are permitted to bring an action.

13,265. That might be brought into operation in some form or other?—Yes, but preliminary investigations are very difficult indeed, because it is really trying the case.

13,266. Have you been aware, in your experience, either in the Divorce Court or in the county courts, of any reasons felt by poor people which are not experienced by the rich in obtaining divorce where divorce is desired?—I have had no experience at all of it.

13,267. (*Lord Guthrie*.) You said that if the county court got jurisdiction there ought to be in a fit case an absolute right of removal. Who would have the right to exercise that discretion? You used the expression "absolute right" and you said also "in a fit case." Would it be an absolute right to the respondent, or would it be a right subject to the discretion of the judge?—I have said that I would give every petitioner an absolute right of bringing a suit in the Divorce Court. In the case of a respondent it is very difficult to say what is a fitting case. A fitting case means a case in which the person could pay the fees for the removal. If a respondent is to remove his case to be tried in the High Court, I think he ought to have an absolute right to do so, provided he could protect his opponent in the matter of costs; and so with a co-respondent.

13,268. Do not you think that there are some advantages in the proposal to group county courts as against your view that if they are to get jurisdiction they should all get it?—Do you mean having district judges?

13,269. Yes?—I cannot see the logic of that.

13,270. Do you think it important that counsel should be available in such cases?—I think it is an advantage for the judge to have an advocate before him who can deal with the case properly and expound the law properly.

13,271. If you have a system of grouping, that is easier to manage?—That would be, of course.

13,272. Also is it not desirable to have the assistance of a bar of solicitors which would not be found in all county court towns?—Yes, I think it would; and I think that raises this question, whether all solicitors should have the right advocacy in divorce cases, because the administration of the divorce law is very difficult in this respect; the bench must depend on the bar a great deal for the preservation of decorum in the court. It is all very well in the Divorce Court in London; there is a judge who is assisted by a bar which does assist him to preserve the dignity and decorum of the court.

13,273. And to be answerable for any concealment or misrepresentation if it is ultimately found out?—That opens up a very large question.

13,274. Is it not your view in all divorce cases that wherever tried the parties should be represented by either counsel or solicitors?—Yes, I think so. I would not allow in this class of case the parties to appear in person.

13,275. You would prohibit it?—I should almost go as far as that.

13,276. Is that done in any court, in any kind of case, civil or criminal?—I do not think it is.

13,277. That would be a new principle?—Perhaps I ought not to have said that; but, on the other hand, I have memories of parties in the country who did appear in person. If they had been divorce cases, they would have been very difficult to deal with.

13,278. Would it rather come to this, that by some system facilities should be provided in the case of the poor, so that they might have professional assistance? Would you exactly compel it?—Do you mean that the court should have power to allot them solicitor or counsel?

13,279. Yes?—That would be a great advantage if it could be done, but that is a question for the Treasury. It would be a very great advantage not only to the suitor, but also to the judge.

13,280. On thinking it over, you would, at all events, like to consider the question whether you could absolutely prohibit parties appearing if they desired?—I think you could only prohibit it if there were some power given to allot them legal assistance, but I think it would tend very greatly to the advantage of the court and of the parties, consequently, if that could be done.

13,281. In regard to applications *in formâ pauperis* in the county court, are there many made or granted?—I will not say many, having regard to the number of cases.

13,282. Would you say a dozen in the year?—I should think that would be my experience, a dozen to 20 in the year.

13,283. I put a question to another county court judge which perhaps you would not mind me asking you, roughly, in how many cases do you take time to consider your judgment in the course of a year? Another judge said he thought four would be about the outside?—I do not know that I can answer you.

13,284. I mean where you give a written judgment?—In a workmen's compensation case, if the point involved is complicated, and I think will very likely be a subject of an appeal, I write my judgment. As a rule, in giving judgment—I may be wrong—I find that first thoughts are best.

13,285. Might one a month be the outside?—I could not give you any figures.

13,286. (*Sir Lewis Dibdin*.) I think you have said that the objection to uniformity of decision, if you have a number of judges dealing with any matter, is inevitable in the system. If there is a number of judges, there must be a number of views?—I think so.

13,286a. I suppose you would agree that perhaps possibly the ideal system would be where there was not that variety of view, but it is an impossible idea?—Yes, so far as facts are concerned, it is impossible of attainment.

13,287. Whatever the drawback of that imperfection in our human system may be it is aggravated by the number of judges who exercise the jurisdiction?—Yes, I think that follows.

13,288. Therefore, is not the evil arising from the lack of uniformity a matter of degree, that is to say, is not it more mischievous, or does it not work more mischievously in the case of the 50 county court judges, if they all had divorce jurisdiction, than in the case of the two judges in the Probate Division?—Of course it must be so, but the curious thing is that it already exists in every other class of case.

13,289. Your view is that if this jurisdiction is given to the county courts it must be given to all of them?—Yes, I think so.

13,290. And it must be open to all suitors?—Yes.

13,291. On the other hand, it is suggested that there should be a money limit of the means of the parties. Is there any true analogy between the idea of allowing a man to come to the court if he has less than a certain income and not allowing him to come if he has more than that income, and the idea of limiting the civil jurisdiction of the county court to money claims of a particular value. I suggest to you that the two things are quite different?

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—I think they are quite different, and it seems to me that the fallacy is this. When you say that a person with such-and-such an income should be a person who is to be permitted to come to the county court, it seems to me the fallacy is that a man's income is not the measure of his capacity to pay. You may get a working man earning 2*l.* a week who is in a much more affluent position than a clerk who is earning 300*l.* or 350*l.* a year. It is what a man has to do with his income.

13,292. Is there any precedent in our English system for providing a court open only to people with particular means?—Not that I am aware of.

13,293. Does it not appear to you a little invidious that a court should be maintained in London purely for those who have large means, and other courts in the country of a rougher character, say—I do not know what adjective to use—for those who cannot afford the more expensive court?—I am not sure that I follow your question.

13,294. The suggestion that is made is that the Divorce Court should be kept up in London as it is now for those who can afford to use it, but for those who cannot afford to use it that the county court should be substituted on a much cheaper rate. Does not that come practically to this, that you have one court for the rich and another for the poor?—I cannot agree with that way of stating the proposal, because you could say that the House of Lords is a court of Appeal that is kept up for the rich. It is a very expensive thing to appeal to the House of Lords, but I should not agree with that way of stating it, that it is kept up for the rich.

13,295. There is no inferior House of Lords in the country for the poor man?—No, but it is open to everybody who chooses to go there, and questions go there *in formâ pauperis*.

13,295*a*. As far as you know you have said that you know of no demand among the working classes for any extension of the divorce jurisdiction?—No, I have not become aware of any in my experience.

13,296. Your experience has been considerable in different parts of the country?—Yes, it might be there would be a demand, and I should not hear of it, sitting in a court which has no jurisdiction in divorce.

13,297. I ask that to ask this further question, whether you have any opinion on this. Supposing jurisdiction were conferred on some local court, do you think there would be a very large number of divorce cases or not?—I think that may be gauged by an examination of the divorce list at present in London. A great many cases that come to London would undoubtedly be spread over the country.

13,298. To that extent it would diminish the number heard in London?—Yes, that would follow, I think.

13,299. Have you considered the suggestion made by Mr. Justice Bargrave Deane that a judge from the Probate Court, perhaps an additional judge, but some judge, should go down and deal with cases locally at centres from time to time?—I have not considered it, but it seems to me that it is very much like sending an assize judge down on a special commission.

13,300. Without the paraphernalia of assizes was his idea. I am merely putting the idea he adumbrated in that chair. Do you think that is a practical idea or an idea worth consideration?—I have not considered it. If Mr. Justice Bargrave Deane suggested an idea I should say offhand that it was worth consideration.

13,301. You have just mentioned assizes. Have you considered the idea of dealing with these cases at assizes?—So far as my recollection of assizes goes, and it was considerable for 15 years, I should think that it was utterly impossible.

13,302. (Chairman.) Would you give a reason for that?—Yes, because the judges go down and open the commission, and it takes them all their time to dispose of the criminal and civil work, and if you are going to add all the divorce work which has collected in the six months between the assizes, it seems to me that you would extend the time of the assizes very considerably.

13,303. (Sir Lewis Dibdin.) In regard to the idea of definite centres as distinguished from the county

courts all over the country, may I suggest to you whether that would work better; I mean having centres with reference to what you have told us about, the advantages of a local bar and local solicitors, solicitors who are particularly conversant with the work. That would be much easier if the divorce business was taken at particular centres. What I am saying now is whether you have a particular county court judge appointed or send down a judge from London to hear cases at centres scattered all over the country, would it not be easier to secure the services of something like a local bar, or at any rate a bar that would come there for the purpose of a special court?—Yes, it would have that advantage, undoubtedly.

13,304. Do you agree with the report of Lord Gorell's Committee that counsel ought to be employed in divorce cases—that it is unsafe if they should not be employed?—I think it is a great advantage if counsel are employed who are familiar with the administration of that branch of the law, but if you have a bar of solicitors who have made that their speciality, they could deal with it just as well. Down at Plymouth there was an extremely good bar of solicitors. There were certainly half a dozen men there who were quite competent to deal with any branch of the law.

13,305. I suppose it would be difficult to secure that in all the county courts of the country?—Yes, naturally, because at some of the outlying courts the work is not sufficiently remunerative to take down an advocate of experience or standing in his profession.

13,306. You laid stress on the importance of decorum being kept in court, and I suppose sometimes there is a difficulty in doing that unless you have a bar, counsel or solicitors, who help the judge to preserve proper decorum?—Yes, I think that is so.

13,307. Would not that be much more easy at courts held at centres than if this jurisdiction were distributed all over the country and a few cases now and again at every county court?—I think that would be one of the advantages of getting a local bar. When I say that a judge of the Divorce Court must rely to a large extent upon the aid of the bar to maintain the decorum of the court, I represent the sentiment of the late Lord St. Helier. He said so to me more than once.

13,308. I think you laid stress upon the difficulty there might be as to interlocutory proceedings in the county court in regard to divorce. You instanced alimony. It was suggested to you, I think, that a suit would be disposed of so quickly that alimony would hardly be a practical matter. In your view is it desirable that divorce suits should be disposed of with very great rapidity after they are started. Is there not something in the view that there should be a time for deliberation, particularly when you are dealing with poor people?—Yes, I have said that, but I should make the time for the deliberation before the proceedings were initiated. I think it is too late afterwards.

13,309. You mean after the petition is lodged?—I think it is too late then. I said, if you make it cheap and easy, a mere matrimonial tiff would be made a ground of proceedings, and then it would be too late.

13,310. I was not referring to anything you said; I was trying to get your view as to whether very rapid divorce litigation is desirable. I mean rapid in the sense of the suit coming on like a separation summons in a week?—In all litigation I think when a suit is once commenced it is to the public advantage that it should be quickly disposed of.

13,311. You do not think it an important feature in divorce matters that the parties should have an opportunity of deliberation?—After the decree has been pronounced?

13,312. No, after the suit has been initiated?—No, I do not think you could achieve that, because you could not say that a divorce suit should not come on for hearing before a certain time.

13,313. Do you attach any consequence to the six months for the decree nisi, or do you think that might be with advantage abolished?—I would rather not express an opinion upon that.

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13,314. (*Judge Tindal Atkinson.*) I do not know whether you have formed any opinion, particularly in your divorce experience, that there may be a considerable class in the community who cannot get justice done for them, where they have a good ground for divorce, owing to the expense of coming to London? Do you recognise that there is that denial of justice at present existing?—I think so.

13,315. The question to be considered is how this is to be obviated. Can that be obviated in any other way than appointing certain local courts to which these people can resort?—Do you mean one in every district?

13,316. Whether it is in every district or wherever it may be, the only way of putting an end to that injustice is to bring the courts who administer this jurisdiction within the reasonable reach of the party who wants them?—Yes, as a general proposition. I should say yes.

13,317. Then the whole question resolves itself into this, what is the best form of local tribunal to deal with the matter and where those local tribunals should exist? That is the question to be considered next, is it not?—Yes.

13,318. Must that not be determined by this consideration, that you must have the courts where the people, having regard to their means, can come?—That would mean you would not have local courts, and that the divorce cases would take their chance in the ordinary county court list.

13,319. First of all as to the tribunal. The question is what is the best tribunal to be selected to take these divorce cases, having regard to the means of the parties in getting there. That is the matter to be considered?—Yes.

13,320. Having regard to the fact that there are 563 county courts spread over the country, with a staff attached to every one of these county courts, does not that *prima facie* point to the county courts being the best tribunals at present existing to which the parties can resort in the Kingdom?—Are you putting that instead of the suggestion to send round a judge?

13,321. At the present time you have the divorce court in London, you have the assizes, you have the county courts, and you have the magistrates' courts. Dealing with that system as it exists, in making any alteration in the system, which of those tribunals is the best for the purpose of giving parties access who at present cannot get access for divorce?—To that proposition there is only one answer, and that is the county court.

13,322. Having arrived at that conclusion, the next point to be considered is whether you can limit the number of the county courts to deal with these cases consistently with the people getting to them. You would prefer to limit the number?—No, I do not indeed. I am just the other way.

13,323. You think it should be open to all?—I say, give it to the county court, and treat it like other county court work.

13,324. You were asked a question, which I did not quite follow, by Sir Lewis Dibdin. He said, "Do you know of an instance in which a court is accessible to one class and not accessible to another?"—No, I do not know of any such court.

13,325. Take the county courts as they exist. In an ordinary action over 100*l.* they are not accessible to the parties at all. In that sense the county courts' jurisdiction is limited; they are only accessible to the party who has a claim within that limit?—That is so and there is a fact which shows how very illogical and wrong that limitation is, because again and again you find people bringing actions in the county court who will abandon a substantial excess over 100*l.* in order to get their cases tried in the county court.

13,326. I hardly agree. The injustice is grave to poor people to abandon the excess. Now, about the assizes, is not this a not uncommon illustration of what happens at assizes. A judge will come down and have 20 criminal cases at least, and in his list he will have two or three murder cases and a manslaughter case at the end of the list, and he will have six or eight civil cases. If you add to that 20 divorce cases, four of

them defended, it would make the work impossible as regards the divorce cases?—I think it would increase the duration of assize time most alarmingly.

13,327. Would it have this result, that it would be impossible for the judge to be able to fix a specific day on which he could take his divorce business. Could he do it?—I do not think he could do it at assizes. He could not do it. There is also this. If it is at assizes the cases would have to be heard at the assize towns, and that would involve bringing people from all over the county to the assize towns. They might as well go to London.

13,328. That deals with assizes. Now with reference to the diversity of opinion among the different judges; if ultimately it was suggested that the assizes should have the jurisdiction there would be a considerable diversity of opinion among the sixteen High Court judges?—There is now on other questions. You will find it not only among lawyers but among laymen. People take a different view of facts.

13,329. Assuming the grounds of divorce are specific grounds, not left to the general discretion of the judge, there need not necessarily be a great diversity of opinion? Supposing the only question is adultery, or that the only question is desertion, leaving out cruelty, assume that you have specific cases about which there could not be any dispute, why should there be diversity of opinion? It would only be an inference to be drawn from the facts?—Yes, but I can only repeat what I have said, that people take a different view of the evidence as to facts and will continue to do so in any branch of litigation. They do so at present.

13,330. Your opinion is that the county courts should be open to everybody?—Yes.

13,331. Not only in this jurisdiction, but in all jurisdictions?—If jurisdiction is given, I hope it will not be given in the way county court jurisdiction has been enlarged from time to time, that is, by tinkering. If it is given with any limitations there will be a fresh agitation and a fresh Commission to consider the question of whether it should be enlarged. It always happens.

13,332. With reference to the general right to go to the county court, would you limit the amount of damage which would be claimed against the co-respondent?—I have not considered that, and I should not like to express an opinion upon that.

13,333. As regards removal by right, the absolute right of the respondent, you say that it would be only right to be granted on the respondent giving proper security for the costs?—Yes, I think if a respondent is dissatisfied with the tribunal and wishes to have it tried in the High Court, by all means let him have it, but you must protect your opponent in the matter of costs.

13,334. Do you advocate suing *in forma pauperis* in divorce cases?—No.

13,335. Do you see any reason why people should not do so if they resort to the county court?—I should like to qualify that. I think there may be cases in which justice demands that they should be allowed to sue *in forma pauperis*, but it ought to be guarded very jealously.

13,336. And be very exceptional?—Yes.

13,337. With regard to suing *in forma pauperis*, you have not many cases, I understand?—No, I should put it at one dozen to 20.

13,338. Since I have been a judge I have had only one application, and those were from Polish Jews who had been in England about three weeks?—When I say that I have had one dozen to 20 applications I do not say that I always granted them.

13,339. About a jury in the county court, could not any difficulty of local prejudice be obviated by summoning juries from the other districts of the same circuit to try cases?—I think it is rather hard on the juries.

13,340. They would be equally distributed over the whole of the circuit?—That might be done.

13,341. As regards making it not too easy to get into the Divorce Court for divorce cases, you would leave that to the rule committee?—I should leave that to a scheme to be devised by the rule committee.

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13,342. (*Mr. Brierley.*) You say that some obstacles or impediments ought to be placed in the way of divorce suits being lodged without proper consideration. You also said that it would be too late after the petition had been once issued. Can you suggest how in practice such obstacles should be placed in the way of hasty suits being brought? Would it be entirely a matter of imposing fees, rather heavy fees for the initial part?—I think the argument of the pocket is the strongest.

13,343. Can you suggest any other means than the imposition of heavy fees for filing the petition, comparatively a heavy fee?—Certain proceedings are guarded against already. For instance, the Attorney-General has to certify that there is a case for the King's Proctor to take up; at least, I think that is so.

13,344. (*Chairman.*) I believe the King's Proctor always takes his advice and acts on his fiat?—There is an instance where a certificate is given.

13,345. (*Mr. Brierley.*) Would you suggest such a certificate. I do not know about the Attorney-General, but a certificate by counsel?—Counsel might certify, or you might have a solicitor's certificate, and then the judge could permit the plaint to be issued. It is done by plaint.

13,346. Something of that kind?—Yes, anything that would make people consider before they rushed into a suit.

13,347. (*Judge Tindal Atkinson.*) With regard to the congestion of business in the different county courts, you have no practical knowledge of the congestion of business in the different county courts in the Kingdom?—No, I said I wished to speak for my own court only.

13,348. Do you think that Westminster County Court is congested?—Certainly not.

(*Chairman.*) I wish to thank you very much on behalf of the Commissioners for your valuable evidence.

Mr. CECIL CHAPMAN called and examined.

13,349. (*Chairman.*) You are one of the metropolitan magistrates?—I am.

13,350. Where is your present court?—Tower Bridge.

13,351. How long have you been a magistrate?—Ten years.

13,352. Have you given the subjects upon which I am about to ask you your very careful consideration?—Yes, I have.

13,353. I will first ask your views as to jurisdiction being conferred on local courts?—Yes.

13,354. Do you think there should be such?—Yes, I feel sure there ought to be.

13,355. In divorce matters?—Yes.

13,356. Will you tell us in your own way what are your views about that?—My views are these. I think that divorce being for something in the nature of a criminal breach of a special contract, it would be more suitable to have a special tribunal for the trial of divorce cases, than that they should be sent to a county court, which deals with the ordinary breaches of an ordinary contract.

13,357. What do you indicate by a special court?—I was thinking of magisterial courts, recorders' courts, because first there is a machinery for the supervision of cases which are dealt with in those courts, which is quite peculiar to magisterial work. As it is very applicable to separation cases I cannot see any real distinction between separation and divorce cases in so far as that kind of supervision is material and useful. If it could be established it would be a useful court for dealing with it from the view of practical utility.

13,358. The recorder's?—I said the recorder, but the stipendiary I was thinking of.

13,359. Both recorders and stipendiaries?—Yes, that was my idea, and I thought, and still think, that the evil which has been pointed at, a diversity of decision, is minimised by the fact of special courts with people dealing continuously with a special class of case.

13,360. How would that meet the country districts?—The number of stipendiary magistrates would not have to be necessarily increased very largely, even to meet almost every case, as far as I can judge. There are certain places difficult of access, but I am not able to find out about them.

13,361. Do you mean the stipendiary magistrate for a city should have the jurisdiction conferred upon him?—Yes.

13,362. And the recorder?—Yes.

13,363. You think those magistrates are brought into close relationship with the people?—That is my idea. There is no doubt that the nature of magisterial work does bring people into very close contact with the lives of the poor people. The people learn to trust them, and the magistrates get experience of how to deal with them.

13,364. Your view is in that way the restricted numbers would prevent varying decisions?—I think so.

13,365. And also the courts would not be crowded like assize courts?—That is another opinion I have.

I think the less you have of people coming up on other business to take a part in divorce proceedings, the better for everybody.

13,366. What do you say as to limited jurisdiction?—Do you mean the amount of income?

13,367. Yes?—It is very difficult to estimate, but I think 150*l.* a year should be about the limit to entitle people to come.

13,368. You were here while His Honour Judge Woodfall gave evidence?—Yes.

13,369. Would you agree with the suggestion of unlimited jurisdiction with the power of removal?—I think not. My opinion is that the cheaper tribunal should be left to those people whose means render it suitable, that they should go there with the power of appeal in the case of anything going wrong. I must say I think that is important.

13,370. The next point deals with the check upon improper proceedings?—Yes. Again I just heard questions put with reference to preliminary inquiries. With reference to our dealing with separation cases, it is very important, I think, that a person who launches divorce proceedings should lodge an information upon oath.

13,371. Do they lodge anything of that kind as a preliminary to a separation summons?—If we require it.

13,372. Have you power to require it?—Yes, we have power, and when they ask me for a summons, I ask them what are the particulars of cruelty which they refer to and how persistent have they been. If the answers do not seem to me satisfactory, I say, "Put this back and let it come to me in the form of an information, and I will consider whether I will grant this summons or not."

13,373. You think something of that character should be applied?—I am sure it would be useful.

13,374. With regard to juries, what is your view?—I have no experience, as a magistrate, of dealing with juries, but I think juries should be permissive, but I do not think it is a very useful tribunal in the case. I have expressed the opinion if juries are to try such cases they ought to consist equally of women and men. I think that might be something in the nature of a deterrent, because I hear people say a man would be ashamed to go into court if women were to listen to what he had done, and I think that anything in the nature of a deterrent is rather a useful thing.

13,375. The appeal you propose is to quarter sessions from such tribunals as you mention?—I did say that, but I am not at all sure that the appeal should not be to the Divorce Court.

13,376. A recorder is quarter sessions?—Yes, that would not do. There ought to be an appeal, I think, to the Divorce Division.

13,377. Do you see any objection to an appeal to the Divorce Court?—Not at all; I think it would be a very good appeal.

13,378. You propose that the cost of proceedings should be limited?—Yes, I think that the cost should

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[Continued.]

be very limited. I think it is a real and grievous injustice.

13,379. I will pass on now to a matter which comes very much before you, the question of separation orders?—Yes.

13,380. You have at Tower Bridge applications averaging from 250 to 300 per annum, and the number of orders made averages from 80 to 120?—That is so.

13,381. You have estimated that that would mean for the metropolis 3,000 applications and 1,000 orders in a year?—That is a rough estimate I have been able to form.

13,382. What is your view as to the effect of these orders?—The effect of separation orders, I think, is generally bad. It leads to perfectly reckless immorality very often on the part of the man, and very great difficulties for the woman. The woman is in constant difficulties from the fact that the maintenance order is not complied with by the man, and he often uses some system of duress by insisting on her coming to obtain the payment from him, and he uses most reprehensible means of trying to get rid of the order by making her consent to some form of reconciliation which is not real.

13,383. Upon what experience is the statement made which is put before us, of it being productive of reckless immorality on the part of the man?—I have had that from the experience of my missionaries, male and female, who have always given me assistance by watching cases of that kind. They often come back with the report that the man, as a matter of course, is living with another woman whom he has taken as his housekeeper, and the woman, on the other hand, is without the alimony which we have ordered to be paid, and she has to wait by law until it has accumulated for a month before she can come for an arrear summons. That, I think, is an injustice which ought at once to be remedied.

13,384. Do these representations from your missionaries apply only to solitary cases, or is it common?—It is very common indeed. Indeed, so many of these separation cases are really the result of the man having taken some other woman to himself before they come to us. We have no power of dealing with that under the Matrimonial Causes Act, but, as a matter of fact, immorality on the part of the man has very often started before they come for a separation, and they come to us upon the ground on which we are entitled to give it.

13,385. Desertion?—Desertion is almost invariably accompanied by adultery on the part of the man.

13,386. The order in effect perpetuates the state of things?—It does absolutely.

13,387. What is your remedy for that?—I do not doubt for a moment that they ought to be divorced. Divorce is infinitely better than separation which tends to immorality. I am sure of that.

13,388. Do you mean divorce because of adultery or because of separation by desertion?—There should always be something in the nature of a period of waiting to see whether the parties are really maliciously intending to break the original contract or not. Even an act of adultery does not necessarily mean that the man is viciously intending to completely break the vow between the wife and himself, and they are willing to overlook it on many occasions; but when you find that it is persistent and malicious, and they have no intention of fulfilling the original bargain, what begins in separation ought to end in divorce.

13,389. Do you mean divorce if there is nothing proved except the malicious desertion?—After a certain period, yes. I think it should not be longer than two years, but I think it might reasonably be granted, if the desertion is malicious and without maintenance of the wife, even at the end of a year. I should not give it within less time.

13,390. Your next point is with regard to the economic dependence of women. Will you tell us what you intend to convey by that?—It is a very curious thing, but it comes out almost every day in dealing with these cases, that a separated woman who gets an allowance from her husband is in a better position than a wife living with her husband, because

the husband gives her absolutely nothing for herself. She cannot spend 6d. as her own, and the result is that married women submit to atrocities on the part of their husbands on many occasions simply because of their pecuniary dependence. When you find that a woman is the breadwinner, or has a shop, you find her position is quite different. The man treats her differently, and her happiness and the whole of her life goes better directly the woman has something of her own to depend upon. The man treats her with greater respect, and she treats herself with greater respect. It is a very common evil. I had a case the other day where a woman came to complain that she had been forced by the husband, who was constantly out of work, to go to work, and she maintained the husband for a long time, who was a hopeless drunkard. Eventually a separation had to take place and the man claimed the whole of the furniture and came to the house, because he said he had bought the home originally, to take it away; she had no share in it because he bought it. A wife has no claim on anything which belongs to the partnership in law.

13,391. I am afraid that you have conveyed no remedy for that?—There is a very serious difficulty in making a remedy unless we give her a legal proportion of the man's wages while she is living with him.

13,392. The economic dependence of women on men in the working classes must generally prevail, I take it, because the man is the breadwinner?—I agree unless we give them some legal right to a proportion of the man's wages whilst living with him and acting as the mother of his children and the keeper of his house. In the nature of things she ought to be entitled to something in the nature of wages for the work she does in the house.

13,393. Your next point deals with inebriety?—The only thing I can suggest is this. Separation for inebriety, especially in the case where the man puts his wife away, almost invariably ends in disaster, unless by personal endeavours on our part, and on the part of our missionaries, we save the woman by getting her into some institution, but in a great number of cases, the woman refuses to be helped. We have to make an inadequate order, because of the man's means, for her protection; we have to give her something like 7s. a week, and she receives it on the Monday and drinks it on the Monday, and is on the streets on the Tuesday.

13,394. Can you help us to a remedy for that?—The remedy I suggest is that when perpetual inebriety has been proved, the magistrates ought to have the power to detain that woman in an institution for a certain period, it might be a varying period, for the purpose of curing the woman. We often do it voluntarily, and with great success.

13,395. That does not come exactly within what we have to consider?—I think it does. If you are dealing with separation for inebriety it would be most pertinent that your Lordships should recommend that where inebriety is proved to the satisfaction of the magistrate as sufficient to justify a separation, it ought to be sufficient to give him jurisdiction to detain the woman for a particular period. The husband is often anxious it should be so, and is willing to pay.

13,396. Would you go any further and give in those cases a right to divorce?—At present I feel that you should, where a doctor is able to say that the inebriety is due to brain disease, which they do sometimes, and pronounces it incurable; but they have no right to say that until they have waited two years. I have known cases cured after two years. So long as the inebriety cannot be pronounced incurable, I do not think that there ought to be a divorce; a very large majority are curable and then there should be no divorce. If it is incurable, and there are cases which you are perfectly well able to pronounce as incurable, then there ought to be a divorce if it is wanted.

13,397. In other cases this power of detention would be useful?—I am sure that it is useful.

13,398. The next point is amendments of the present state of the law. I am not forgetting what you have already said. If you have your proof before you perhaps you will summarise this?—Yes, the first is that separations ought to be for fixed periods only, and

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each case should be assigned to a probation officer. My idea is this, that, as now happens, when we get young married people before us asking for separations we put them in charge of the probation officer, with the result that reconciliation constantly follows, even though it is necessary for the moment to have a separation because of the danger to the wife from the violence of the man.

13,399. You prefer that they should be made permanent on their face?—They should be made for some period like six months to begin with. The second is after revision separation to be discharged or continued, but never for a period exceeding two years.

13,400. What is to happen then?—If it has been so long I should make it a divorce. The third is that the necessity for a wife to leave her husband in cases of cruelty and neglect ought to be abolished.

13,401. I think we know that point, neglect to maintain and cruelty should not necessitate her departing before she can get an order. Then I think the next point we know about, and the next point you have dealt with already?—Yes.

13,402. The next point, number 6, is another one?—This is one of importance: maintenance orders ought not to be rescinded because of wife's misconduct, if that has been brought about by the conduct of the husband or he himself has been guilty of adultery. I have so many cases, and all my colleagues have the same, cases where the wife has been left starving by the man, and even consciously means have been taken by the husband to ask a lodger to live there and bring the wife into such a position of dependence that she has been obliged to yield to guilt on the part of herself.

13,403. And then he gets the order cancelled?—Absolutely cancelled.

13,404. There is no discretion?—No discretion.]

13,405. You would give a discretion?—Yes, I would give a discretion. The next point is that separation orders should be made to effect amendment and reconciliation, but failing that should end in divorce. That is a general summary.

13,406. From what you have been telling us, may I take it that your view is adverse to anything which produces permanent separation between the parties?—As distinguished from divorce, certainly.

13,407. The next point you have already dealt with?—Yes, I have already dealt with that. Great good would result from a wife being made legally entitled to a proportion of her husband's wages during marriage—

13,408. You add to it "and an inalienable claim for a proportion of his estate after death"?—That would be an interference—I do not know that it has anything to do with this—with the right of testators; it is adopted in France and other countries, and it certainly does prevent great scandals, which we often find among people of fairly good means, who leave their wives with nothing. We have had such cases lately.

13,409. The last point is that you think it should be possible to make maintenance orders payable to an officer of the court for a wife, and after continued neglect to make an order recoverable direct from the employer?—It is a very curious difficulty, but one which is constantly arising. The man insists on his wife coming to meet him in a public-house to receive the maintenance money, and when she meets him at the public-house she is often liable, not only to bad treatment and abuse, but to something in the nature of duress and even temptation to drink.

13,410. I think we appreciate that; it is the latter point I am not sure about, the employer. We have had it suggested that employers might resent orders being made?—I do not know that they would not, but I have had cases where the employer would not resent it and the employer has appreciated what has taken place. The man gets his wages regularly but refuses to pay them over to his wife and prefers to go to prison rather than pay to his wife, for reasons of personal malice or some other reason. I have had cases of employers saying, "If you will allow me, I will

pay the money into court," but I have to say that I have no power to do that.

13,411. You would give a magistrate, subject to the employer's consent, power to authorise him to pay a proportion of the wages direct to the woman?—Yes, I think it would be an admirable thing.

13,412. Then the next point is upon another matter. Will you give us your view as to the publication of reports of divorce and matrimonial causes?—I think it is quite unnecessary to go beyond general publication of the substantial facts. I think that the publication of details is wholly bad.

13,413. Have you any practical experience which has led you to form that conclusion, or is it a general one?—I have found it in this, so many people have told me that young people have been led to disastrous talk and conduct from the publication of details which they had much better not have heard.

13,414. Has any of that information come from your court missionaries?—Yes, on many occasions.

13,415. Why should that have been specially brought forward?—Because cases of immorality on the part of boys and girls are brought before me, in the nature of summonses for assault and for molestation in some form or another, and it turns out that these children or young people have been reading together some of these cases, or have been discussing the question of these divorce cases which have been made exciting in the newspapers.

13,416. Has that been frequently called to your attention or not?—It is common; I do not know I can say that it is frequent, but it certainly is every month or so that I hear it in one form or another. It is an evil which has been brought to my notice on many occasions. I cannot personally see that it does any good to publish those things.

13,417. The next part of your proof refers to the amendments of the laws relating to divorce and matrimonial causes which you suggest?—Yes, I begin by saying that there should be absolute equality of treatment between the sexes in the matter of divorce. I consider that is good for men as well as for women. Personally I do not look upon divorce as the cause of disaster to the matrimonial bond; I look upon it as the index of disaster which has already occurred. I cannot help thinking that the coming for divorce or the possibility of obtaining divorce is the only way by which we shall get a better ideal of married life. There is nothing else which will bring home to the senses of man that he ought to behave himself with a sense of morality in married life.

13,418. You think if that equality were instituted, it would act as a direct check upon the conduct of men?—I do. I am sure that it would improve their sense of morality in married life.

13,419. Is that a general view, or is that based on anything which has come before you?—It has come to me in this way, that the men who come before me in the separation cases are so completely regardless of any sense of morality towards their wives. I do not think that it is their fault; it is the custom for a married man to think that he is entitled to do exactly what he pleases with his wife, and that she has no right to complain if he takes another woman to his bed at the same time. It seems to me a most curious thing.

13,420. How does that come before you?—It has come before me in two very glaring cases where a wife came for a separation on account of the husband's cruelty, and the cruelty there relied upon was the fact that the husband had turned the wife out of his own bed and put her into the kitchen and taken another woman into his own bed. I asked, "How long has that occurred?" and she said, "That has been going on for a long time; he has done that for the last month or so." I said, "It is perfectly monstrous that it should be so." I then said to the man, "What have you to say to that?" And the man said, "I have done nothing you can separate me for; after all, I have fed her, I have kept her, and given her a certain proportion of my wages; she has nothing to complain of because I prefer another woman."

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13,421. You said there was another case?—Yes, I had a similar case, almost exactly on all-fours, which came before me. Those cases came before me within three months.

13,422. You mean that if you get them to apprehend that immorality is wrong it will tend to check all that?—Yes, it would make the man feel he is under the same obligation to restrain himself as the woman. He is down on the woman if she misbehaves, but he does not think she ought to be down upon him at all.

13,423. The next matter, number 2, is practically the same thing?—Yes. Then I refer to the next point, and it seemed that you suggested the possibility of reform? In the cases which we have of married men becoming the fathers of bastard children, it seems to me that the immorality of the man is very much encouraged by the fact that after the bastard order has expired the man's misdeeds are entirely forgotten and there is no record of it, and he has very little sense of shame about those things. I am sure that the bastardy laws ought to be completely revised. I think that is a general opinion.

13,424. With the object of what?—Of making it much stricter and giving greater facilities to ascertain the facts. I think the children ought to be registered, for instance, in the name of the male parent as soon as the paternity is proved or admitted.

13,425. At present it is only in the name of the woman?—Yes, the woman has to bear all the burden absolutely before the poor law.

13,426. That could only be done after obtaining a bastardy order?—Yes, and after the admission of the man, as a rule. He admits, as a rule, that he is the father, but he does not much care, for the reason that the child is not registered in his name, and there is no lasting responsibility for it, as there ought to be, before the poor law. He is the father and yet his paternity ceases at the age of 16 for all practical purposes.

13,427. You think that that tends to make him think nothing of it?—It tends to laxity of morality on the part of the man and disregard of the misery which is caused to the woman and the bastard children.

13,428. Now with regard to number 4, what have you to say?—In number 4 I suggest, and I think it is important, that marriage should be looked upon as it really is to everybody, a social contract, and it should not be looked upon as a sacramental contract except by those people who really feel it to be so. For that reason I would have everybody compulsorily married at a registry office, and let the church service be a thing apart, taken up by those who believe in marriage as a sacrament.

13,429. Will you give us more fully the grounds of your view and what you think would be the consequence?—The reason is this: at present I think there is a complete disregard of the social contract. I am told by the clergy in my district that the most scandalous marriages which end in the greatest disaster are those which are lightly taken and are contracted in churches where they have actually advertised cheap marriages. It seems a strange thing to me, but I am told that there are churches which have advertised cheapening of the marriage fees, and boys and girls go up in considerable crowds to be married in the most thoughtless and reckless way. The clergy themselves are the people who have brought it to my notice as being fruitful of great disaster. I believe if it was treated always as a social contract and brought before the registrar, young men and women would look upon it as a social contract entailing an obligation which they ought to fulfil in a different way from the church service, which creates a sense of obligation only in the religious mind. There is merely a sense that they have gone through the ceremony in the mind of those who are not religious, but after all it is a serious matter. They think, "We are bound together; there it is; there is nothing in the nature of a civil obligation; you have become my property; that is enough." In speaking of it to many people I have found that people do not look upon it sufficiently as a contract to be performed, because it is a contract which has been taken up in a church, where some mystery has

taken place which they do not realise as entailing any civil obligation on their part to act the part of a partner in a contract partnership.

13,430. What class of churches are you speaking of?—I do not know about the class. It is the case of the clergy who choose to act in a way which has been done. My attention has been called to it by one of the prominent clergymen in my district, and he has actually called my attention to an advertisement that the fees at such-and-such a church should be lower than at another. That is only a detail of the system.

13,431. Your view seems to be that if the whole of the community were compelled?—It would make it easier to recognise the social contract.

13,432. That it would be recognised everywhere as absolutely binding?—As a social contract, that is what I think.

13,433. And they would realise more definitely than they apparently do, if your view is right, that they are bound permanently?—I think that they would realise it much more than they do. I am speaking of those not affected by the religious point of view.

13,434. Why do not they so regard it when they have a very large number of marriages before a registrar now?—I think for this reason: the fact that it is done now by special people and for special reasons does not come under any general law. They go there for personal reasons, but where a thing has become general and the whole world is obliged to go and be married under certain, I should say, very strict rules in a very public manner, and in order that it may be appreciated by the parties that it is a solemn obligation they are undertaking, I think the general law would have effect. It does not have effect so long as it is limited to people who take it up for special personal reasons.

13,435. I think you amplify this a little more in your next paragraph. Will you tell us what you wish to say about that?—The consent of both parents should be required for a lawful marriage up till the age of 21 in both husband and wife. I understand now that before a registrar the consent of the father is required; the consent of the mother is not; and I think everything which would tend to make further consideration of the marriage before it takes place is very important. To add the mother's consent as a necessary preliminary to a lawful marriage up to the age of 21 would be a useful thing.

13,436. Do you mean that the marriage should not be performed without that? I think the father's consent is required. I think the father's consent is required, or the guardians', by the court, but if the ceremony is performed it is a lawful marriage although someone is subject to some penalty. You would go so far as to make it invalid?—I think I should say it is not necessarily invalid, but it should be a marriage which might be set aside, as it is in France.

13,437. At any rate, you go so far as this, that somebody should be satisfied they had really got those consents and not merely accept the statements of the parties?—I think that would be enough, and in 99 cases out of 100 it would be given, but there would be an end of that which often happens. I have heard parents complain in my court that they did not know that their son was married or that their daughter was married. They come to me for a separation, and I say, "What were your parents about?" I am speaking of children who are married at the age of 17 or 18, and I say, "What were your parents about?" I send for them, and they tell me that they have never heard of their being married. Although they have been married in church the parents have not heard of it.

13,438. You also add that there should be proper publication of intended marriages?—Yes, I feel that.

13,439. There is publication?—I do not know whether it is sufficient, for the reason that I have come across these cases where the parents say that they have never heard of it. It seems to me that the publication must be inefficient.

13,440. What is the next point which you mention?—That is the same as I have already spoken of before, the right to some provision during marriage.

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13,441. You have also dealt with your eighth point, about sworn information?—Yes.

13,442. And also with regard to a preliminary separation?—Yes. I say that no pecuniary advantage should result to the guilty party from divorce, and there should be provision necessary for wife and children. If a man who has misbehaved and gets a divorce is not under an obligation to maintain the wife who has had to put him away, he gets advantage from a divorce which ought not to take place, and I presume that that should not follow. Some of them like being divorced, because it relieves them.

13,443. The wife is entitled to a permanent order against the husband of so much a week upon getting separated?—That is answered by that, if the local tribunals have the same power.

13,444. If that is extended it would also apply?—Yes.

13,445. In your last point you mention a number of causes. What have you to say with regard to those?—It is very difficult to pronounce anything like a strong opinion upon that.

13,446. Will you give us your opinion and, as you are doing it on other points, give the reasons, because they are extremely valuable?—Yes, I will. I say that divorce should be allowed when the marriage contract is impossible by—(1) Insanity. (2) Repeated violence due to epilepsy. (3) Wilful desertion and perpetual neglect. (4) Hopeless inebriety. (5) Confirmed criminality. In regard to insanity all that I have to say about that is, there are cases of great misery where the insanity is perpetual, and the man has to pay to the guardians so much a week out of his wages for a wife who is considered hopelessly insane after so many years; the result is that he has taken up and is living with another woman, and the woman cannot be righted as she wants to be made a lawful wife, and there is no hope on the part of the man that the original contract will be carried out.

13,447. To what extent have you come across those cases actually?—I suppose I have had about three or four cases last year.

13,448. In what way do they come before you?—They came before me through the guardians' application to recover the money the man was under an obligation to pay.

13,449. For his wife in the asylum?—Yes. The man complained very bitterly to me he had children to maintain, and that it was very difficult for him to pay the 5s. a week he was paying for his wife in the asylum. I had inquiries made into the case, and discovered that what had happened was, that to look after his children he had taken a housekeeper with whom he was living; the case was a hopeless one, the woman had been in the asylum for two years, and the doctors pronounced the case quite hopeless.

13,450. Did you find a similar state of things in the three or four cases?—Yes. I cannot recall more than two cases with any clear recollection, but I could get more information from the officer who brings those cases before me. I have no very clear recollection of more than two cases.

13,451. What class of people are you speaking of—the working class?—Yes.

13,452. (Lord Guthrie.) Three or four cases?—Last year it was three cases, I think; I am wrong in saying four.

13,453. (Chairman.) Had you had any in previous years?—No, I cannot recollect it being called to my attention till last year. I daresay I have had the cases but did not make inquiries. I daresay I was more anxious to make different inquiries to find out what was going on.

13,454. Does it mean, in that class of life, if a woman is shut in the asylum the man takes a housekeeper?—Yes.

13,455. Are those cases where children have been left?—Yes.

13,456. And someone is wanted to look after them—Yes. Someone comes to look after them, and the circumstances of their home are so poor, and the rooms which they have to occupy are so small that it is almost impossible to expect that the man and woman should

not eventually come together. That is what they do as a matter of practice.

13,457. Have you anything further to say on that particular point?—No. I only wish to guard against it being done without very careful inquiry as to the permanence of the insanity. That ought to be necessarily guarded against. It should not be done lightly.

13,458. You note at the end of this general paragraph that there is a necessity for recurring periods of separation in these cases up to two years to test the possibility of recovery?—That covers all I feel about the cases. We have very sad cases indeed, which arise from epilepsy, because sometimes there is no desire on the part of the wife to shirk her obligations; but she sometimes comes before me and says it is impossible without danger to her life to go back to her husband who has these fits of violence due to epilepsy, and after inquiry, I have found that is so, and the doctors say: "It is not safe for me to let her go back."

13,459. How does that come before you?—From the woman coming to ask for a separation on account of cruelty and violence. The man, who is often a good sort of man, says: "The truth is a very little drink upsets me, and I lose my senses, and I do not know whether I am beating my wife or the furniture." He is practically a lunatic. He is very sorry for it, and begs that he shall not be separated because he is fond of his wife, and she agrees he is fond of her, but that the violence is such she cannot live without danger. On inquiry I have found that is the case. I have had cases of people who have suffered from sunstroke, soldiers in India, perfectly good husbands.

13,460. Speaking generally, that comes under the category of cruelty, or rather, where it is unsafe to live together?—That is so. It is brought before me as a case of persistent cruelty. It ought to be recurring cruelty from epilepsy, and often that is brought on or stimulated by excessive drinking.

13,461. The next point is desertion?—Wilful desertion speaks for itself. Those are cases where the husband in a great number of cases has already taken up with another woman, and if you ask him whether he wishes to go back to his wife, or *vice versa*, he says: "No, not at any price," and you think, "But this is reconcilable," and you put it off to see whether it cannot be done; but only where the parties are really young do we often succeed in reconciling the parties. The desertion is sometimes proved to be malicious and intentional, and intended to be perpetual. I had such a case before me yesterday. A man was living with another woman by whom he had two children, and his wife had an order for separation on account of desertion, and he came to get the order reduced because he had lost some position.

13,462. Those cases you mentioned just now would be met by adultery?—Yes, I agree. I was thinking of cases of desertion and perpetual neglect without adultery. There are many cases in which I have not traced adultery, where we only surmise there is adultery, and therefore it is sufficient for my purposes if a man says: "I am not going to fulfil that original bargain; I intend never to see my wife again," and if that lasts a whole year I think the woman ought to be entitled to a divorce.

13,463. What do you say with regard to inebriety?—That comes under the same category as insanity, because I would only grant a divorce for that when it is proved it is due to the brain and therefore perpetual.

13,464. The importance to us is your experience. To what extent have you come across cases in which that is the right thing to do?—I do not think there have been many. I have cases now in which I have been in correspondence with people who have been separated. I think I have had three cases where the woman has turned out to be hopeless. The man has given her a chance twice at my request, after her going into a home, and it has turned out to be hopeless. I think I have three cases. I have correspondence about two going on now, where the woman has gone to a home two periods of three years in succession, that is

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six years in detention, and after that has broken down. You cannot get the husband to take her back after that. If the doctors prove, as they do, and pronounce her to be hopeless, the husband will not take her back.

13,465. In those cases, has the husband taken up with someone else?—Yes, nearly always. It very rarely happens that he does not.

13,466. The last point is confirmed criminality?—It is a very difficult thing to say to what degree, but we have very cruel cases of respectable girls who have been married to men without knowledge of their past, who turn out to be criminals who have already been doing penal servitude for a considerable period. The girl is married in ignorance of any bad past, and the result of her marriage is that she has a child, and almost immediately afterwards the husband is taken up for some act of criminality. He goes to prison for three or four years, and she makes her home. She goes to work, supports her child or children, and as soon as he comes out of penal servitude he insists upon and demands the rights of a husband: he takes all she has earned, sells her furniture, and within a fortnight or so he is in prison again. I have two or three such cases in my experience, and most painful they are. It seems something like brutality to allow any longer that man to come back to the woman and rob her of all she has earned while he has been in prison. That is what happens. It is a monstrous case.

(Chairman.) I think that exhausts your proof.

13,467. (The Solicitor-General.) As I understand your views, reckless marriages are the cause of a good deal of the immorality which you have found?—I think so.

13,468. That means, generally speaking, marriage at too early an age?—Yes, I think so.

13,469. Generally speaking?—Generally speaking, I should say it was.

13,470. I do not understand your view about the suggestion in your proof that everybody should be compulsorily married at a registry office and that marriage in church should be optional. The generally accepted view is that a marriage in church is considered more binding, is it not?—I do not know whether it is the generally accepted view; it certainly is not in practice, I think. I feel that the scandal of a broken marriage is enhanced by the fact that it has been made under the solemn conditions of a Church service which has really no meaning to the particular parties who have taken part in it. The scandal is much greater when there is a complete breach of that contract or any disregard of the obligations. It seems to me so.

13,471. If the tendency was to increase the number of marriages before the registrar and to decrease the number in churches, would not that also tend to make the sanctity of the tie less regarded?—I think not. I think the average man going before a tribunal he understands, and pledging himself to fulfil a contract he is made to understand, would feel under a greater obligation than in going through a ceremony which has some mystery about it which he does not understand, and the sanctity of which he does not appreciate in the least. Taking up the civil contract before a tribunal like the registrar or a judge or a magistrate, a man would have a greater sense of obligation to fulfil his duty as a citizen than he would when he goes with a girl in an inconsiderate way before a clergyman and does something in the nature of a religious act he does not understand, and an obligation he does not appreciate. That is my view of it.

13,472. (Chairman.) That view is partly from communications you have received?—I have had communications from the clergy, from a particular person of some importance in my district who takes that view, too, very strongly.

13,473. (The Solicitor-General.) Communications from him suggesting that the marriages in churches should be optional, whereas it should be compulsory in the registry office?—He is a clergyman with a very high sense of the obligations of a Christian.

13,474. (Chairman.) Is there any reason why we should not be told his name?—No. It is Mr. Herbert Williams, the rector of St. John's, Horsley Down, in

Bermondsey, a very high churchman and with a very strong sense of the Christian obligations to Christians.

13,475. (The Solicitor-General.) Is not the effect of that recommendation that these marriages which are entered into so recklessly ought not to be made the subject of a religious ceremony? Is not that what he means?—No; on the contrary. He may possibly come and give you his views about that. His view is that making a contract under mysteries which are not appreciated the least in the world renders these people perfectly reckless. They have not recognised they are under a civil contract with obligations to fulfil. Marriage to them is a kind of game which they have played, or have been trapped into by being taken to church, and there it is, and they do not realise the mutual obligation of the one to respect the other.

13,476. What puzzles me about that is this. Is it not curious it should be that under those circumstances that a civil marriage before a registrar would make a person of that character regard the marriage tie as more sacred?—Perhaps using the words "more sacred" is misleading, but more binding.

13,477. I will use the words "more binding," if you like?—I do think so. The same people who treat the marriage obligation recklessly would fulfil a bargain made with their stockbroker with absolute accuracy, and feel themselves under much greater obligation, I believe.

13,478. Are the people of whom you speak the kind who make bargains with their stockbroker?—Perhaps they are not.

13,479. That is rather important, because I can understand that view when you are speaking of persons who make bargains with their stockbroker. It puzzles me. I thought you were speaking of what one may describe as the lowest class?—The "lowest" again is a misleading phrase. The poorer classes have a very distinct sense of obligation to fulfil their apprenticeship, if apprentices, or their services, if servants, but they have not any sense of special obligation in the marriage bond, as far as I can judge.

13,480. I do not necessarily mean, when I speak of "the lowest class," the poorest class. As far as I gather from what you have said, you would be speaking of a very low class intellectually, when you say they do not understand the service or the mystery there is in the church service?—I think so. I think that applies to a very large majority of the youths in our streets. Whether the dock labourer class, or the costermonger class, or the people who walk up and down the street, I think their religious sense connected with dogma or anything of that kind is weak.

13,481. But that is not the class who make bargains with stockbrokers?—But they make bargains with their employers.

13,482. That is only a question of wages?—I mean they will recognise a contract: it does not matter what the contract is.

13,483. Do I rightly apprehend your meaning? I am not attempting to put it in a better way, but I want it to be clear, that the civil contract they understand and the other they do not, and therefore they regard the one they understand as binding, and the one they do not understand they treat as of no validity?—Yes, almost that. I think that is very fairly put.

13,484. Then that must put the class of whom you are speaking on a very low level intellectually?—I am not sure about that. It applies to people who are intellectually very competent in their work.

13,485. There is one further matter with regard to this which is new to me. You speak about churches advertising cheap marriages?—I am informed of that. I have only seen one advertisement myself.

13,486. Will you give me some idea of the form of advertisement? Does it mean there is reduction in fees as compared with other churches?—Yes.

13,487. A competition between churches in the same sect?—Yes.

13,488. One trying to undersell the other?—Yes.

13,489. You have seen that?—I have seen one instance which has been brought to my notice, and I have been told that it is a practice. I am bound to

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say I have to accept that on the statement of the clergyman.

13,490. (*Chairman.*) From memory can you give with any reasonable accuracy the advertisement you did see?—No, I cannot. It said, "The fees for marriages at this church will be reduced from so-and-so to so-and-so, and marriages will take place," giving a list of the dates. I saw quite a long list on the church wall which was shown to me.

13,491. (*The Solicitor-General.*) Can you give us any idea of what the reduction would be?—No, I cannot do that. Upon that point perhaps Mr. Williams might be called.

(*Chairman.*) If the Commissioners wish to have him communicated with, the Secretary can do so. We can discuss that between ourselves.

13,492. (*The Solicitor-General.*) Do you know what the cost of a marriage would be in the registry office as compared with a marriage in the church?—No, I am afraid I cannot answer that with accuracy. I have it in a book.

(*Sir Lewis Dibdin.*) May I say, having some knowledge of that subject, as a rule they are the same.

(*The Solicitor-General.*) The same in the registry office as in the church?

(*Sir Lewis Dibdin.*) As a rule.

(*The Solicitor-General.*) That would mean if there is a reduction advertised by one church it would mean it would be underselling the registry office.

(*Sir Lewis Dibdin.*) Yes, and entirely illegal. I shall want to ask a few questions about that.

13,493. (*The Solicitor-General.*) You have spoken about the cause of insanity, and gave it as one of the grounds of divorce you would recommend?—Yes.

13,494. I think I gather, from something you added, you mean incurable insanity?—Certainly. I could only mean that. People are married for better or worse. I do not mean to get rid of that obligation at all, but where it is incurable the cases of misery are very great.

13,495. You spoke also, as I followed the instances you gave, of a case where the woman had been in the asylum two years?—It was not necessarily incurable, but it was pronounced incurable.

13,496. You agree you would have to be very careful in the safeguards?—Yes.

13,497. It would not do to accept certificates merely?—No; it would have to be carefully watched for two years to see if there was any chance of amendment.

13,498. It would be necessary, first of all, to allow a certain period to elapse during which the person is certified as incurably insane before you permitted divorce on that ground?—Very strongly. I have had people who have been pronounced incurable who have recovered.

13,499. That does occur?—It does. It is a question rather of time.

13,500. The ordinary experience would be that if you get a person for a certain number of years showing no alteration for the better in his condition, who has been certified as incurably insane, you would be as safe, humanly speaking, as you could be?—After two years of hopeless insanity I have never known them recover. There may be such cases, but I think that is sufficiently long.

13,501. I should have suggested to you it was a little short?—I will enlarge it.

13,502. I am only making the suggestion?—I am told that it is a question for a doctor. I have never known a case of two years' hopeless insanity recover. I have known where a man has recovered within six months or a year or 18 months, but I have never known it go beyond the two years; but it may be so.

13,503. Is it in reference to those cases you told us you had watched cases during the last year?—No. The cases I referred to here were cases I got from the evidence of the Poor Law officer in Bermondsey. I did not watch them myself at all. The cases which come before us for orders of maintenance for the insane are cases which have lasted for a considerable period. The man always has a bitter complaint and asks me to

reduce it because he has paid for five years. I have had several cases like that.

13,504. Is it the result of the large experience you have had that, speaking generally, with a married couple, if anything happens to make the one partner live apart from the other, that immorality results?—I am afraid that is my experience, certainly on the part of the man.

13,505. I was going to suggest to you that is more so on the part of the man than the woman?—I would not say it was at all general on the part of the woman. The woman is in this position, that her offence is at once met by the fact that she is left without any means. She loses her maintenance order if she commits herself, so that she is under very strong compulsion to avoid it, if possible.

13,506. Is it the result of your experience in reference to these maintenance orders that they are effective?—They are effective in many cases, but they come to me every morning. I have them coming up to me for maintenance arrears. A man is very irregular in his payments sometimes, because he cannot help it, and sometimes they tell me they have already got another wife and several children.

13,507. It is very difficult to collect the arrears?—We have the option of sending them to prison if they do not pay, and if a man is a good workman he will pay.

13,508. That involves his having the money. It is not much of a remedy if you send him to prison?—We defer it. If I have made an order for 10s. a week to support the wife and children, and he is in arrears, I make the order to send him to prison and suspend it during the payment of 12s. a week instead of 10s., so that the arrears get wiped off. If he is a good man he takes that. I make a great many orders like that. By degrees it works itself off. On the other hand, there are a great many who will go to prison rather than pay. Those are very hard cases for the women.

13,509. Do I understand your view to be this, that if you made misconduct of the husband equally a ground for divorce to the wife, as it is to the husband for the wife's misconduct, in your view that would raise the tone of morality of the man?—I think so; I think for both. It would raise the morality of both.

13,510. Particularly the man, I should imagine?—Particularly the man.

13,511. The husband, that is to say?—Yes, I think so.

13,512. Your view is that the fact that although a husband may misconduct himself, a wife is not able to sever the marriage tie, and therefore is not in the same position, makes him look less lightly upon the misconduct by himself than he does upon the misconduct by the wife?—I entirely agree. I am sure that is so.

13,513. It encourages the notion that the laws of this country look upon the misconduct of a man as comparatively unimportant compared with the misconduct of a woman?—I am strongly of that opinion.

13,514. That makes him think so lightly of it that he thinks lightly of the immorality?—I am sure of that. I feel that very strongly.

13,515. If that part of the law was amended so as to place it in the same position as in other countries, a man would think more seriously and highly of his duty to his wife, and would hesitate before misconducting himself?—You express exactly what I feel about it.

13,516. (*Sir William Anson.*) I understand you would considerably enlarge the existing facilities for divorce?—I would extend it certainly to the poorer classes. I would have the same for the rich and the poor.

13,517. There would be a good many grounds for divorce if your proposals were carried into effect which are not grounds for divorce now?—Yes.

13,518. As a preliminary matter, you would endeavour to enforce the seriousness of the marriage contract?—Yes.

13,519. By a longer time in all cases, a longer notice, whether the marriage was before the registrar or in church?—Yes. I want to make it as certain and clear as possible and to be guaranteed that there has been consideration by the parents as well as the children.

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13,520. And by obtaining the parents' consent?
—Yes.

13,521. Or the consent of the guardian?—Yes.

13,522. Or person responsible—father or mother?—Yes.

13,523. And by securing some provision for the wife?—Yes.

13,524. So that the husband would be made aware of that before he entered into the marriage?—That is what I want.

13,525. And then by the actual ceremony being such as to bring home the legal obligation?—Yes, that is exactly what I do want.

13,526. Then you would rather put aside the church ceremony as entirely optional. Would not that lead to its disuse?—I do not think it would. What I feel about that is that where a person is a Christian in reality and not in mere profession, the church service would be all-important, and those are not the people who come for divorces. They look upon marriage as a sacrament and do not break it, or if they break it they do not ask to be relieved of it. That kind of law is not wanted for a true Christian.

13,527. When you have invested the marriage before the registrar with all this surrounding care and supervision, would not a great many persons, so many being careless, abandon the religious service altogether?—I do not know. I think there are a great many people who would like the blessing of the church on their marriage, even after being made binding by the registrar.

13,528. You have no fear on that account?—No.

13,529. And then, having those securities, you would turn the magistrate into a domestic tribunal before whom they could come and get a separation if, in his opinion, the marriage was a failure?—Yes, if under the strictly defined rules the marriage was an impossibility.

13,530. Under any circumstances it must give a wide discretion to the stipendiary magistrate?—Not if the offences are defined and the period defined. I did not intend to give discretion in the matter. I meant it to be quite defined.

13,531. This extended discretion might lead to varieties of decision in different parts of the country?—Except in this, that the discretion would arise after the first period of six months or the extended period of one year. The discretion would no doubt arise where a magistrate had to make up his mind as to whether there was a possibility of reconciliation and renewal of the original contract or not. There is discretion in that, but there should be no discretion in the original granting.

13,532. As to the possibility of the parties coming together, you would leave it to the discretion of the magistrate to say whether he would extend the separation order or grant a divorce, or leave things alone?—I can see no way of getting out of that, for this reason: at the end of six months you might find that the man has given his wife nothing; she is left starving. You cannot allow that state of things to continue. If a man refuses to give anything towards his wife's maintenance, and she is unable to earn for herself, something has to be done.

13,533. That would be your view, to show the separation should be turned into a divorce?—That is an illustration of what happens before us.

13,534. Others might exercise that discretion?—Yes. One has to look at that, certainly.

13,535. (Sir Lewis Dibdin.) With regard to your evidence as to church marriages, I understand your view as to the poor not realising the binding character of a church marriage, but you surprise me by saying that you think they would regard a marriage before the registrar as a more binding contract. If it is not impertinent, have you seen a marriage before a registrar?—No, never.

13,536. Is it not rather in your mind that the marriage should be a sort of proceeding before a judicial person or some solemnity of that kind?—I am not prepared to deny that. In Cromwell's time, I think, it was before a magistrate. I think Cromwell arranged that they should be before a magistrate.

13,537. Is that a part of your scheme of suggestion?—No. I did not wish to make any suggestion, because my experience of that is not great. All I meant to try and distinguish was a civil contract being brought home to them.

13,538. It has often been made a matter of complaint that civil marriages before the registrar are so devoid of anything like solemnity that the parties do not realise that they are entering into a solemn contract?—I have heard that said, and that is why I should do anything I could to overcome that objection.

13,539. If the law were left as it is, your suggestion of abolishing church marriages and substituting civil marriages would not be very effective, would it?—I do not wish to abolish church marriages.

13,540. Abolishing the legal necessity of it?—Yes.

13,541. Unless you substitute some more formal proceeding for the civil marriage, you would not gain much?—I daresay not. I would make that as solemn as with your help we might be able to do.

13,542. With regard to cheap marriages, you are aware that no clergyman can marry anybody except people resident in his district?—Yes, but they become resident in a formal sort of way by a portmanteau.

13,543. Quite so. Do the class you are considering form portmanteau residences?—I do not know. A coat is enough, I believe.

13,544. Speaking generally, if a clergyman advertises cheap marriages it would be only for his own parishioners, unless he acted illegally?—I would rather not answer personally, because I know nothing about it.

13,545. You know a clergyman can only marry people resident in his own parish?—One of the parties must be resident.

13,546. Therefore, any inducement he held out for cheap fees could only apply to those in his parish?—Very likely.

13,547. Are you also aware that it is not in the option of a clergyman to increase or decrease his tariff of fees?—I know nothing about it.

13,548. You do not know what is the legal method for creating or altering fees?—No.

13,549. Will you take it from me that it is not open to a clergyman to alter his schedule of fees? He may forego a fee in a particular case and give it back to a party, but it is not open to him to alter his schedule or tariff of fees?—I am told at any rate one did so, that my attention was called to.

13,550. May I ask you what the parish was at which you saw this?—I cannot tell you that, because I cannot remember, but I know it was close to me in Bermondsey I do not know the parish.

13,551. Did it occur to you to communicate with the Bishop with regard to that?—I did not know there was anything illegal in it.

13,552. I assume this was a church of the Church of England?—Yes, I was told so.

13,553. A parish?—Yes.

13,554. With regard to publication before the marriage, as far as church marriages are concerned, there is publication of the banns for three Sundays before the marriage?—Yes.

13,555. And also in the case of infants, the consent of the father is necessary?—Yes.

13,556. During that interval it is the duty of the clergyman to make inquiries?—I do not know about that. All I can tell you is, my experience is that the parents' consent is not sought and not given.

13,557. The man comes and wants to put up his banns: he gives his age as above 21?—Yes.

13,558. If he does that, in what way do you suggest can the clergyman be put on inquiry, or the matter be brought to the attention of the parent?—If the boy says he is over 21 when he is not, there is no obligation on the part of anybody to inquire.

13,559. Is there any opportunity to do it?—I should have thought that there was plenty of opportunity if you get the banns put up for three weeks; the ministering clergy and the district visitors, who are moving about and see so-and-so is going to be married, could find out about him. They will come and tell the clergyman he is under age.

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13,560. Have you heard of a case of that kind, where the clergyman has, notwithstanding, married the people without the consent of the parents?—I could not tell you that. My brother has had cases brought to his notice.

13,561. I think that is in a different part of London?—In Peckham, where I work.

13,562. Let us adhere to the particular case you are dealing with. You would agree that if the person applying to be married represents himself as 21, there is no opportunity for the clergyman to make inquiries, because he is not put upon inquiry?—I do not agree. There is plenty of opportunity if the banns are published.

13,563. I do not think we understand one another. I mean if the representation is that he is 21, and there is nothing to lead the clergyman to suppose he is not, he is not put upon inquiry?—He is not put upon inquiry necessarily, but I say there is an opportunity if he wishes to know.

13,564. If he has any reason to suspect the man is under 21, but not otherwise?—No.

13,565. Are you familiar with the nature of publication of notice before marriage in the case of civil marriages?—I have nothing except a book I have read.

13,566. Are you aware what is done is that a notice is hung up in an office, sometimes, I believe, behind a door, for a certain time?—Yes.

13,567. Do you regard that as a satisfactory form of giving notice?—I do not think it is.

13,568. Have you any remedy to suggest for that?—I think notice ought to be given in writing to the parents.

13,569. Ought notice to be given if the parties are of age?—Personally, I think it would be a very good thing to do.

13,570. How is the registrar to know there are parents?—I suppose he could make inquiries.

13,571. Make independent inquiries?—No, inquiries of the parties.

13,572. The party applying for notice says, just as in the other case, "I am 21"?—He would say, "I must have some proof. Give me your birth certificate and "I will believe you."

13,573. You think there should be production of the birth certificate?—Certainly.

13,574. As is required where a man applies for a licence to be married?—I think it should be the same everywhere.

13,575. The concrete proposal you make comes to this, that there should be production of a certificate of birth whenever a party applies to be married?—I think so.

13,576. Under existing circumstances, such security as there is is much greater in church marriages than in civil marriages?—I cannot answer that. I have not sufficient knowledge of the difference.

13,577. The people you are speaking of are the poorest class?—The artizan class.

13,578. That covers such a large class?—The labouring class.

13,579. Do you think that that class can be made to regard a civil ceremony as a more binding thing than going to church?—I think it comes natural to them to look upon a civil obligation which is brought to their attention as a real thing, and the other as a mysterious thing they do not appreciate.

13,580. The class you are thinking of regard all ministrations in a sense of mysterious matter beyond them?—If I may make a distinction, I would say they make a sort of distinction between sin and crime: sin they look upon as something they are frail enough to commit, and a crime as something they are going to be punished for.

13,581. (Judge Tindal Atkinson.) With reference to insanity, is it not almost more important from the State point of view that insanity should be a ground, where it is intermittent? Supposing a man or woman is confined to a lunatic asylum and then is released apparently cured, and for a time the husband and wife come together and children are begotten?—If we are to look at it from that point of view, I quite agree with

you, because all marriages between insane people ought to be prohibited.

13,582. Insanity in that instance, whether it was permanent or temporary, should form a ground of divorce?—I agree with you from a utilitarian point of view.

13,583. The State point of view?—Yes.

13,584. There is one thing about stipendiaries. Do you know how many recorders there are in the country?—I think I discovered there were 40.

13,585. Do you know the number of stipendiaries?—I ascertained in the same way, not so many: about 30, I think.

13,586. (Mr Brierley.) Hardly as many as that?—Twenty-five.

13,587. I cannot tell you, but about 15?—Including the metropolitan.

13,588. I beg your pardon?—Fifteen, outside the metropolis.

13,589. (Judge Tindal Atkinson.) That is sufficient. There are 40 recorders?—I gathered it from Whitaker.

13,590. And 15 stipendiaries outside the metropolis?—Yes.

13,591. In your opinion, would that number be sufficient to do the divorce work amongst them?—I gather it would. From our experience here I made out that if in the whole of London you only get 1,000 cases of a matrimonial character, it is quite easy for one tribunal to deal with 500 cases a year. Two magistrates could do the whole of London.

13,592. Does it not occur to you there is this difficulty, the people would not have the ready access to the recorder or stipendiary that they would have to the county court?—As I said before, geographically I have no opinion about it. I see the importance of having it in places. I suppose the stipendiary could be made peripatetic.

13,593. He would have to travel to a good many places?—A county court judge has a circuit; could not the stipendiary have a circuit, too?

13,594. There are over 500 county courts to which the judge goes. With that number of places the suitors are close to their different courts?—The means of getting to and from have so much improved, I should have thought it was possible to get sufficient centres.

13,595. You have considerable experience amongst the poorer classes?—Yes.

13,596. Is it not your experience that it would be a very formidable thing for the working classes to have to go to any great distance from their work and take their witnesses with them?—Yes. Therefore I thought you could bring a court within reasonable distance, within railway communication.

13,597. The recorders only sit every three or four months—

13,598. (Mr. Brierley.) Four times a year?—That is the four quarters.

13,599. (Judge Tindal Atkinson.) What staff has the recorder?—What I feel about it is this: to make divorce treated with the solemnity it deserves and the uniformity from the tribunal which it also requires, it is necessary to have a special court. A special court is more easily formed by a stipendiary magistrate, or something of that character, than it is to go to a county court and mix it up with civil suits of all kinds.

13,600. Assuming those evils exist as regards county courts, is it not a greater evil if you prevent the people from getting justice by having to go great distances?—Yes, if the distance is prohibitive.

13,601. (Mr. Brierley.) Outside London, the 15 stipendiary magistrates are, as a matter of fact, collected in very few counties?—They are.

13,602. I think I might say, with the exception of seven or eight counties, there are no stipendiary magistrates in the country?—I should be prepared to recommend that they should be appointed especially for the purpose, because I think it is important to have a special tribunal.

13,603. It comes to appointing special courts, and you think they ought to be manned by?—I suggested that because I think the procedure before them and the machinery in their courts is particularly suitable.

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13,604. As regards the registry office marriage, do you speak from your own experience as well as from what you have heard from the clergyman you mentioned? Do you find, I mean, in the cases that come before you that marriages have been in any way better observed when entered into at registry offices?—No, I have had no experience at all. All I have had experience of, which is very often scandalous, is the marriages which have taken place in churches between boys and girls of 16 or 17. How they get married I do not know, but they do.

13,605. Would you consider the increase of divorce cases would be a test of the sanctity in which marriage is held?—Not necessarily. I see from the statistics, and dealing with the countries in which there are greater facilities for divorce, that greater facilities for divorce are not followed by a greater number.

13,606. The proposal you make has been adopted in comparatively recent years by several countries, for instance, France, and, I think, Italy?—Yes.

13,607. Do you think that marriage has been held in greater respect owing to that alteration in their law?—I cannot say. May I give one example which struck me? A brother of mine in India, a great many years ago, told me the Jews in Bombay have great facility for divorce; a man can divorce his wife practically when he pleases, and *vice versa*, and the curious thing is that there are practically no divorces. Each of them feels the tenure of position in the marriage contract is so slender, that they had better behave themselves.

His Honour Judge the Hon. WALTER BARRY LINDLEY called and examined.

13,617. (Chairman.) You are one of the judges of the county courts?—Yes.

13,618. Will you tell us what is your district?—Derbyshire, circuit No. 19.

13,619. Does that include the town of Derby?—All Derbyshire, except the district of Glossop, and Burton-on-Trent, in Staffordshire.

13,620. How long have you filled that office?—Eight years next September.

13,621. Have you formed any view as to the establishment of local courts for jurisdiction in Divorce Court cases?—Yes, I have thought a good deal about it, and my own opinion is rather that if there is any other available court that could do the work, the local courts are not desirable.

13,622. Do you see your way to indicate the other court that could do it?—The only other court I could think of would be the assize court, but the objection to that is, that there is a difficulty in the continuity of work between the assizes. I thought that possibly either the High Court district registry, or the local registries of the Probate Court, might be able to do what was necessary between the times of circuit.

13,623. Would there not be a difficulty in bringing any matter before the judge, unless he is on the spot for interlocutory work?—I have no knowledge of the divorce practice, and I do not know how much interlocutory work is done by the judge, and how much by the registrar, but if there is any work which has to be done by the judge there would be that difficulty.

13,624. The second point is as to the desirability of maintaining the obligation of the marriage tie. Will you give us your views with regard to that?—I am afraid I have no definite experience to go upon, but from a public point of view, I think the sanctity of the marriage tie is the basis of society, and nothing should be done which would weaken that, or the respect which is held for it by the poorer classes as well as by the rich. It seems to me to be equally essential, or, considering the numbers, even more essential, that the poorer classes should have a high idea of the sanctity of marriage than that the rich should.

13,625. Do you think that is attained by living in a position in which they cannot get free from the tie, no matter what the offence is?—I do not know that it is. That is not what I meant. My point was rather this. Whereas in questions of property and mere money value, there is a logical reason for having a cheaper and inferior tribunal for small cases, where you are dealing with the sanctity of the marriage tie there

13,608. Several continental countries, certainly France, have made the civil ceremony compulsory?—Yes.

13,609. And made it compulsory that the civil ceremony shall precede any religious ceremony the parties choose to add?—Yes.

13,610. You are not able to say whether that has increased the estimation in which the marriage contract is held?—No.

13,611. It is hardly shown by the number of divorce cases, which have also increased?—They have increased, but they are very much smaller than anything we know.

13,612. Smaller in what?—In number.

13,613. Far greater; the percentage is higher?—The percentage has increased, but smaller in numbers, I think, as a whole. The percentage has increased very rapidly.

13,614. I think it is larger in numbers. The number of divorce cases in France is larger than in England?—It is not the experience I have in one of the books of statistics.

13,615. Also the increase in the percentage of divorce cases is greater?—Much.

13,616. (Chairman.) What section of the churches do you belong to?—I belong to the Church of England, the Anglican Church.

(Chairman.) We thank you very much for your evidence, Mr. Chapman; it has been most interesting.

seems no reason why the tribunal should not be equally efficient whether the people coming to it are rich or poor.

13,626. The next point is want of uniformity. Perhaps you will explain your view?—My view about that would depend to a large extent upon whether the law is altered or not. As it at present stands, from my little knowledge of it, a considerable amount of difficulty might occur were there many independent judges having to exercise the jurisdiction in the case of cruelty. I fancy there is room for a considerable amount of divergence in what one individual might consider cruelty and what another might, and also a considerable amount of divergence would arise in dealing with the maintenance orders and the alimony which had to be allotted to the wife if she obtained her divorce, and matters of that kind.

13,627. Would that difficulty be met, assuming some jurisdiction were given to the county court, by allotting this particular branch of the work to a few of the county court judges, who take extended districts and in that way cover the country?—The fewer the number of judges who exercise the jurisdiction the smaller opportunity is there for diversity between them.

13,628. Would you be in favour of a limited jurisdiction being given?—Certainly.

13,629. Have you formed any views as to its locality and its pecuniary limit?—It depends on what court is to exercise the jurisdiction.

13,630. Assuming for the moment it was placed in the hands of the county court?—If it was placed in the hands of the existing county courts, I think the locality should be limited to the local jurisdiction of those courts. So far as pecuniary limitation is concerned, it struck me there ought to be a limitation both as to the means of the parties—I hear it has been suggested 150l. a year, which I should think, if one has to draw a line, is as suitable a figure as any other—and also as to the damages which might be recovered against a co-respondent. I attach considerable importance to the limiting of damages, because when one is bringing the work down to the poorer classes there might be a very considerable temptation to launch divorce proceedings for the sake of obtaining damages rather than obtaining the divorce. It would appeal, I think, to the poorer classes which it is proposed to bring into this extended jurisdiction, much more than it appeals to the classes who seek relief in the High

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Court. There, again, I have no definite facts to go upon, because there has been no experience.

13,631. Do you agree with the suggestion made by His Honour Judge Woodfall that there should be no limit to the jurisdiction?—I should not at all. I think it would raise questions of very great difficulty which the inferior courts would be incompetent to deal with.

13,632. His suggestion was no limit, but a right of removal. The difficulty as to the method of exercising that right was not cleared up?—I do not think it would be satisfactory even if the right was absolutely peremptory to either party, and then I think it would not be good for this reason. If you have a number of independent judges exercising jurisdiction, there are almost certain to be some circuits in which either divorce is obtained more easily on the heading of cruelty, or in which the parties are dealt with more or less liberally in the way of alimony. If that was once known, I think those courts would be crowded with work which certainly ought not to get there.

13,633. You further think that safeguards would be required to prevent the possibility of invalidity in the exercise of jurisdiction?—If there are local limits it seems to me most desirable that the divorce, when once decided, of course subject to appeal, should not be subsequently upset by some want of jurisdiction, either local or pecuniary, which is found out after the case has been disposed of.

13,634. In any view you would limit it to simple cases?—Certainly.

13,635. Small class of cases?—Small class of cases where there are no complicated marriage settlements, or matters of that kind to be dealt with.

13,636. With regard to the magistrates' courts, will you express your views?—I heard Mr. Chapman proposing the stipendiary magistrates' and recorders' courts. When I made my memorandum I was thinking of ordinary magistrates' courts.

13,637. Lay magistrates?—Yes. I did not think they were a desirable tribunal, but I have no experience of magisterial work at petty sessions, although I have at quarter sessions, but that does not deal with these separation orders or the other matters of that kind.

13,638. You have summarised in paragraph 7 of your memorandum the objections you make to county courts?—The first one is that they were established to try matters of small importance, and the conditions under which the judges work are not suitable for the trial of important cases. As to the first paragraph, what I thought was this, and I think it is a real danger, although there is no experience in support of it: if divorce cases are brought into county courts in the same way as small grocery bills and other trifling matters of that kind, the poorer classes who resort to those courts will attach very little more importance to a divorce case than to trying to get payment or get out of payment of an ordinary household account.

13,639. Would that objection be met if a limited number of judges disposed of this work, and had definite centres, and definite days, to take it and it alone?—I think it would to a great extent, because it would be more like a superior court, and would not be mixed up with the ordinary rough and tumble work of a county court.

13,640. In substance, you mean it would not be seemly to sandwich a divorce case between a claim for a 2½d. debt?—My objection is not only against taking them jumbled up, as you suggest, but I feel strongly that there ought to be something in the court itself, either by special sitting, or the place in which it sits, to differentiate this work from the ordinary rough and tumble work of a county court.

13,641. Will you continue with your objections?—The paragraph about the circuits is a difficulty which would not arise if it was so arranged that special days could be allocated to this work; but in the country we are always on circuit, and the difficulties of the circuit system in the way of adjournment and unfinished cases arise. "The cases to be dealt with are numerous, and generally the parties are poor, and the sums at stake are small. It is, therefore, most important to dispose of these cases without an adjournment, which would

"often mean the delay of a month at least." I do not think there is anything to add to that; I think it speaks for itself. "There are no regular hours for the day's work. The judge has to finish the day's list if possible. To do this he has frequently to work long hours against time. If there are arrears in a court, it is very difficult to work them down, as light work in one place cannot be made use of to clear off arrears in another." I think that also speaks for itself, undoubtedly; the absence of any definite time for rising or finishing work does add very much to the labour of the court. Then, "if cases of importance and magnitude are to be done in the county courts, as well as the ordinary work, there is grave danger of one or other class of work suffering, and of suitors being put to great inconvenience by frequent adjournments." My experience with regard to that is, that occasionally one gets very long workman's compensation cases, and sometimes, very occasionally, a jury case, and if it is a long court day, it has been very inconvenient for other small litigants. I have myself sat till 9 at night, and have occasionally had to sit on Saturday (a day I generally keep free if possible) to dispose of the work left undone on the regular court day, in order that the next court day should not get blocked by the arrears. I think divorce cases are cases of great importance, even if not always of great length, and if they were mixed up with the ordinary work, it would lead to considerable confusion.

13,642. That might all be met by the suggestion of judges delegated at definite places and fixed times for dealing with this work alone?—I think so, if provision were made for the work which those judges would otherwise be doing being done in their absence.

13,643. Would that be met by deputies sitting for them at the expense of the Crown?—If the Government thought a perpetual system of deputies in place of proper judges was a suitable remedy, it might be carried out.

13,644. What was passing through my mind was this—I put it as an inquiry—suppose you did establish a local court of adequate importance at a proper centre and with proper officials, it is difficult to forecast the amount of work?—Almost impossible.

13,645. Could it not be possible, till that was ascertained, for certain selected judges from the county court bench to do that work, and their places filled, till things were ascertained, by a deputy?—I think it would do, so far as the performance of the work is concerned, but it would be throwing an extra burden on the judges selected to perpetually go outside their circuit away from their home.

13,646. With regard to juries, what should you say as to leaving the decision of this class of case to a judge alone, or the parties having a right to a jury?—I have no personal experience in divorce litigation, but I should imagine that there are cases in which a jury of men drawn from the class of the litigants, might be very valuable in ascertaining the facts; but my own experience of county court juries is not very favourable, and it is very limited. I only have three or four a year on the whole of my circuit, and they certainly very often are summoned in cases where one could easily dispense with them, and when they are summoned they entail a much greater length of trial and more dislocation of work than if they were not there. On one or two occasions I think they have been of assistance.

13,647. In your districts it comes to this, the parties are all satisfied with the judge alone, except in a very odd case?—I do not know I should put it on that ground. I should rather put it they are dissatisfied with the jury. It might be the other way, perhaps. I never found anyone pressing for a jury, or very seldom. It is generally in a running-down case, or something of that kind, if they ask for one.

13,648. The next point is want of familiarity on the part of bench and bar with these cases?—Personally I have no familiarity with them, and so far as I know no official in the Derbyshire county courts nor any of the solicitors, nor the few local barristers who come to the courts have any familiarity with them either. It seems to me the more unfamiliar the judge is with the

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work the more necessity there is for the solicitors and counsel who deal with it to be familiar with it, and *vice versa*.

13,649. That would involve, if carried to its extremity, that all cases should be taken before the London judge?—That, I presume, is beyond hope.

13,650. The other alternative is that those in the country who have not the familiarity now should in due course acquire it?—I think every new person who is appointed would have to start again from zero. I daresay in time the local practitioners would acquire familiarity with it.

13,651. I suppose when a workmen's compensation case came on they had to acquire the necessary knowledge to handle it?—I do not think it is such special knowledge. There is a fairly simple question of fact similar to what one has to decide in other cases, and where it is a medical question one has assistance, a medical assessor or a medical referee.

13,652. What do you say about this point of collusion, which is the next matter you refer to?—I think it would be extremely difficult to fathom it, because no one would be able to make inquiries to ascertain, and I think the fees would be so low that it would not repay any solicitor in good practice to take the matter up. I think in many cases the litigants would very likely appear in person, and if they did there would be very grave danger of collusion between the parties and very great difficulty in ascertaining it, because neither party would be able to get up their evidence properly or cross-examine the witnesses on the other side, or bring forward a proper defence, and the presiding judge would have no means of knowing of anything, beyond what was in court, on which to proceed.

13,653. Would your view as to that be met by the adoption of the Scottish system?—I am afraid I do not know what the Scottish system is.

13,654. Shortly stated, it means the allocation of counsel and solicitor to cases where the parties are too poor to pay for themselves?—I think it would be a great assistance to the judge in coming to a right conclusion in court, but how far it would prevent collusion out of court I do not know.

13,655. As to that, it was suggested by some witnesses that the county courts through their bailiffs have ample opportunity of knowing all about the parties?—The bailiffs certainly have a very large knowledge of the debtors of the district, but I do not know that they would have any knowledge of the other people, and I think it would not be desirable to have the bailiffs put into the position of a kind of spies on the poorer classes. I think they incur sufficient unpopularity by collecting debts, and if they went round to collect evidence either for or against divorce cases, it would render their position very uncomfortable.

13,656. The next point has been more or less covered by what you have said. With regard to the King's Proctor's position you have no familiarity?—No.

13,657. Nor with regard to the present divorce procedure?—No.

13,658. The last point is more or less covered by what has been put to you. You think any circuit on which there is such a court should be of such a size as would enable the judge of that circuit to devote a sufficient number of consecutive days exclusively to this business?—My idea was, if this work was given to the county court, there should be one court for the work in each district, not necessarily each circuit; but the judge who did that court should also do a circuit, and that that circuit should be of such a size as to give him time to give special days to this particular class of work.

13,659. I do not see in your proof—perhaps you have not considered it and do not wish to deal with it—anything with regard to the question of publicity of reports or any amendments of the law?—I have thought of it, but I am afraid I have no definite opinion which would be of assistance. My own idea is that the general facts might be reported, and I think it would act as a deterrent if the names of the parties were reported; but that it is not necessary and certainly not desirable to report any details or the

names of mere witnesses who are otherwise not mixed up in the proceedings.

13,660. Has your experience led you to form any conclusions about amendments of the law of divorce?—I am afraid I have never had anything to do with the administration of the law. The only thing I should say about that is this: if adultery on the part of a man was made a ground of divorce, I am afraid that would lead to a very great addition to the number of cases. I have been told by solicitors and others who are more conversant with the manners of the people than I am, that in some districts, especially colliery districts, the wife attaches very little importance at all to the fidelity of the husband unless the husband takes his wages off to the other woman, and they say if the mere act of adultery is sufficient to get the wife a divorce, the husband would not have the slightest hesitation in committing that act if he wished to have a divorce, nor the wife even in asking him to commit it, if they both wished a divorce, and there would not be any means of ascertaining that it was done in a collusive manner. I am told in a very large part of the district adultery by the man is exceedingly common, and thought nothing of as long as it does not tap the wife's wages.

13,661. Do you not think it might tend to check that if the man was liable to have a suit against him for his misconduct without at present adding some other cause, such as cruelty or desertion?—I am afraid I could not offer an opinion upon that, but I believe it is the loss of wages which appeals to the woman more than the fact of infidelity.

13,662. (Judge Tindal Atkinson.) Do you recognise the fact that there is a large class of persons in this country who are denied the opportunity of getting a divorce when they are entitled to it?—Certainly.

13,663. Do you recognise that they should have some remedy?—Yes, if they as a class want it. I do not know whether they really want it or not, but if they do, I do not think mere money should debar them from it.

13,664. The existing courts to give relief consist of the Divorce Court in London, the assizes, the county courts, and the magistrates; those are the only existing courts at present?—Yes.

13,665. Which of those courts would be the best for giving relief to these people who cannot get it now?—I think the assize courts, if the difficulty could be got over of the delay between circuits.

13,666. If we take the assize courts, the assize courts are held at considerable distances from where the parties are resident?—I do not think they are considerable, they are all chosen because they are accessible from the other parts of the county. In both Yorkshire and Lancashire there is more than one assize town. There are two places in Cornwall where they are held alternately.

13,667. Not two at the same time. Is it within your experience that the working classes cannot afford to spend many days away from their work?—Certainly.

13,668. If they had to go to the assizes they might have many days from their work?—I should think in very few places. I am not familiar with the circuits, except that I have had the advantage of going round once or twice as marshal, but beyond that I do not know. I should have thought, nowadays the circuits are so short, that they had not to wait long.

13,669. Have you never known an assize at which a judge would have at least 20 criminal cases to dispose of?—I think if this extra work was put upon the assizes extra time would have to be allowed for doing it.

13,670. Would not that involve the necessity of the appointment of extra High Court judges to do the work?—Very likely, and very properly, if the work has to be done.

13,671. With regard to the cost of going to the assizes, would not the cost be very much greater than going to a county court?—I see no reason why, because the county court costs would have to be reduced, I understand, to a minimum, and I do not know why the High Court costs should not be reduced to the same level. The costs now are very much higher, but I understand the idea is to bring divorce within the reach of the poor;

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[Continued.]

and if it is to be brought within the reach of the poor, I do not see any reason why the special fees for this business in the High Court should be different from the county court.

13,672. You suggest, in order to go to trial at assizes, the fees should be dispensed with?—I do not know whether the suggestion is to dispense with them at the county court, but whatever fee is sufficient for this particular class of business in the county court might also be applied to the High Court.

13,673. Your judgment is that the assizes would be the proper tribunal, and they could efficiently do this work?—I do not say they are the ideal tribunal, but from a practical point of view I think they would be best.

13,674. I daresay you know there are upwards of 500 county court towns in the kingdom?—I believe there are something of that kind.

13,675. In no county court town is there a person who is resident more than 10 miles from his town?—If the suggestion is that every individual county court is to do the work, it would lead to hopeless confusion unless there were an extra number of judges and subdivision of circuits.

13,676. I am speaking of locality. As to locality, the county court is extremely convenient for the purpose?—If you take each individual county court, certainly as to locality.

13,677. They are manned with a staff of registrar and clerks?—Of various kinds.

13,678. Is it not conceivable, as regards the majority of the judges, they would have enough time on their hands to give a few extra days in the course of the year to divorce proceedings?—I think with most circuits they could, if the divorce proceedings were centralised in one court in their district, or possibly two; but if they were diffused over every county court I doubt whether they could. You would get perpetual adjournments, which would take up more than the spare time they had; but it might be done if they were localised. Speaking for my circuit, I have, on an average, three spare days at the end of every month; and if I could devote that time to this business each month I think I should be able to keep it down, but one does not know how much work there would be.*

13,679. You would not anticipate a large number of divorces in your district?—I think, at first, there might be a very considerable number, if there is any demand for divorce amongst the poor, because there must be a number of arrears.

13,680. One of the objections is that the county court proceedings might be rendered void for want of jurisdiction?—I think there ought to be provision made with regard to that.

13,681. Did you see the Lord Chancellor's Bill last session?—No.

13,682. There was a provision in that Bill?—I may have seen it, but I do not recollect it.

13,683. There was a provision in that Bill that no objection should be raised on the ground of want of jurisdiction when a case was decided?—As long as it is provided against, well and good.

13,684. That would meet that objection. As to the want of familiarity with the work, I suppose there are a good many county court judges who have to be appointed who have very little knowledge of bankruptcy when appointed?—I was one myself.

13,685. Since you have been appointed you have had, no doubt, a great many cases of bankruptcy to dispose of?—There are three bankruptcy courts on my circuit, and all the registrars are very efficient to deal with their work, and I have had very few cases before

me. I have had a few fraudulent preference cases and a certain number of orders of discharge, and matters of that kind.

13,686. After a little while you feel no difficulty in disposing of bankruptcy cases, do you?—I have to dispose of them, but I should much rather someone else did it.

13,687. The same with workmen's compensation cases: the judge, although unfamiliar with those, has to find his way into them?—Yes. I think they are not complicated as a rule, except by questions of fact and medical evidence, but the special work is the medical work, and there you get the medical assessor or referee.

13,688. What is the special difficulty in a divorce case beyond questions of fact?—I think the great difficulty is the question of fact, but it is a peculiar question of fact, and there is the strongest temptation to perjury. The more experience you have of such cases, the greater probability there is you would come to a right determination of them. They are questions of fact which are so mixed up with feeling, and so forth, that I think they are by far the most difficult questions of fact there are to deal with.

13,689. Would not that apply to any one of the judges at assizes who have to try them now?—I assume the High Court judges are more competent to deal with such matters than county court judges; they come up to a higher standard.

13,690. With regard to collusion, what do you say is the difficulty in detecting collusion?—One has had no experience, because it has not been tried, but my fear is that the work would be either done by litigants in person or by the lower-class solicitors, and you would never have the slightest confidence that all the matters which ought to be brought before the court were brought, and there would be great danger of many matters being brought forward improperly.

13,691. Is that not a matter to be found out by the King's Proctor afterwards?—I do not know whether the King's Proctor could do it if these matters occurred all over the country.

13,692. I asked Mr. Justice Bargaive Deane how he detected collusion, and he said he could not?—If he cannot, I suppose *a fortiori* we cannot, but I should have thought in the High Court there was the fact that the work is done there by the better class of solicitors, and by the best men there are at the bar, and that is a great protection. I do not say that is so much assistance in finding out collusion, as a great protection against collusion.

13,693. If you abolish the defence of recrimination, if both parties are equally guilty, and that was not made a ground of defence, the question of collusion would not be of any importance?—I should think none, but it seems to me it would put divorce at the will of people, merely a matter of consent between the two people.

13,694. You would object to that being made a new law?—Husband and wife would then simply have to agree together to misconduct themselves with other people in order to obtain a divorce; this, it seems to me, is putting divorce in the position of a purely soluble contract at the wish of either party.

13,695. Do you consider your district is congested with work?—It varies very much. During the last year it has been lighter; the year before last it was heavy. I sat a good many extra days in order to keep the work down; but I do not call it congested, because I have time to sit at quarter sessions, which I should not be able to do if it was congested.

(Chairman.) Thank you very much; we are indebted to you for your evidence.*

* NOTE.—On further consideration I do not think I could dispose of the work, if there is a real demand amongst the poor for divorce, unless my ordinary work was reduced either by a reduction in the size of the circuit or by my being relieved of some of my work by reforms in the county court; such as the abolition of judgment summonses and an extension of the registrars' jurisdiction with power for him to sit in the judge's absence. The population on this circuit is large, and there is a large colliery population. I am satisfied that the number of cases in which divorce proceedings might be brought is, and will be, very great.—W. B. L.

* NOTE.—To this evidence I desire to add:—If jurisdiction is given to county courts there should be some check to prevent divorce cases being brought in haste without due consideration. I would suggest that a deposit in court of a small sum, say 5*l.* or even 3*l.*, as security for costs should be required in all cases (unless dispensed with for special reasons) before the plaint was issued. It would require some time and some sacrifice for a poor person to get this sum, and this would usually insure the *bona fides* of the case.—W. B. L.

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[Continued.]

Mr. THOMAS LANG CHADWICK called and examined.

13,696. (Chairman) You were formerly in practice as a solicitor in Dewsbury, as a partner in the firm of Chadwick and Sons, from 1873 to 1892, and since then you have been registrar of the Dewsbury County Court?—Yes.

13,697. Is that on Circuit No. 12?—Yes.

13,698. The sittings are held at Dewsbury, Halifax, Huddersfield, Todmorden, Holmfirth, and Saddleworth?—Yes.

13,699. Your district has a population of 160,000, and the whole circuit has a population of 550,000?—Approximately.

13,700. It is an industrial population, engaged in a large variety of trades, the woollen trade and others?—Yes, and very large collieries.

13,701. Since your evidence was asked for, you have addressed a circular letter to the registrars of your other courts?—I have.

13,702. And to some 50 solicitors practising throughout the district?—Yes.

13,703. As the result of your inquiries, do you find there is considerable divergence of opinion?—Very considerable.

13,704. On all points?—On all points, I think. I have not had replies from all the gentlemen to whom I sent the circular letter, but those who have replied are diametrically opposed to each other on some points, I think, except two or three. They are practically unanimous upon the point which comes first, that there should be some extension, some devolution of jurisdiction.

13,704a. Am I to take your evidence as the result of your experience, or as adding to it something you have been able to ascertain from the inquiries you have made?—Very largely my own opinion. I should say two or three of my correspondents are absolutely opposed to divorce at all.

13,705. Of what persuasion are they?—They are all churchmen.

13,706. The first question with which you deal is as to conferring jurisdiction on local courts?—Yes.

13,707. Will you tell us the result of your experience, adding anything which shows the general opinion?—I think the bulk of the opinion upon that subject would devolve jurisdiction upon all county courts. I do not agree with that. I do not want to give unlimited jurisdiction except in this way. I think that a poor man or a poor woman ought to be able to get a divorce, not be debarred from getting a divorce through want of money, just as much as a rich one, and I think, although I speak with very considerable diffidence, that a very simple way to meet all difficulties would be to give the President of the Probate Division power, upon an affidavit of merits and an affidavit of want of means, to order that any particular divorce suit should be conducted in any county court to be named by him.

13,708. Would not that involve the applicant in the expense of preparing those affidavits and instructing a solicitor in London to make the application?—No. I do not see why a local solicitor should not do it.

13,709. Make the order?—No, prepare the affidavit and make the application. I think the application might be forwarded through the registrar of the county court. I should suggest that in the discretion of the President the affidavit should be sent down to the registrar of the local county court for inquiry, that he might report upon it.

13,710. With the result an order might be made to try it in the local court?—To try it in the local court; but there, again, I would have the proceedings conducted up to the trial in the court of the district in which the people live, for the sake of economy and because there would be no publicity, but I should very much deprecate the trial being held in that same court. I should give power to the judge of the county court circuit to decide where and when he would hold the trial, because I am very much afraid that, for instance, if a Dewsbury divorce case were conducted in the district county court—I am speaking only of Dewsbury, for example—all the neighbours of

the parties would flock to the county court to hear all about it, and that is what I should like to prevent. I should like the judge of the county court to be able to say, "I will try this case at Halifax."

13,711. Might I go to the root of your point? It does involve a local jurisdiction to be exercised?—Yes.

13,712. But exercised pursuant to an order from the president of the court?—Yes.

13,713. Obtained with as much economy and efficiency as is proper?—Yes.

13,714. Is there any substantial difference between that and making the application to the judge who would try it in such cases, if he were satisfied as to merits and means?—Some standard of means would have to be laid down by the president, and some possible standard of merits, which means only a *prima facie* case?—I want to avoid that. I do not think you can lay down a standard.

13,715. Assume you have the order from the president on an affidavit of merits and want of means. Undoubtedly it would end in a standard of means being fixed?—With regard to the man's circumstances. I mean one man may be better off with 100*l.* a year than another man with 150*l.* The man with 100*l.* a year, a foreman or overlooker, may have three or four children bringing in another 100*l.* a year.

13,716. Would the president be in any better position to make that order than the judge who would be trusted to try the case: that is to say, if the case was started in the county court and was such that the means showed it ought to be brought there?—I do not think so; but my object in suggesting that would be that I do not want divorce to become too easy, and I think there would be more importance attached to an application to the president of the division than would attach to an application to the judge of the county court. Otherwise I had in mind, but I did not like to suggest it, that the application might be made to the district registrar, because the district registrar has power to exercise a similar jurisdiction under section 88 of the County Court Acts in an action for tort, where he can remit an action from the High Court to a county court for want of means.

13,717. That latter part of your statement about this procedure is your own?—My own entirely.

13,718. You said the bulk of your correspondents considered jurisdiction should be given to all county courts, subject to some limit of means?—Subject to some limit of means. Some of my correspondents agree with my suggestion, and not an inconsiderable number.

13,719. Your next point has already been dealt with, that you prefer the trial should take place not quite close but somewhere by?—I should very much prefer it.

13,720. Would that be met by directing all these matrimonial cases should be heard *in camera*?—I do not like the idea of proceeding *in camera*. I do not like secrecy. I think if the thing is to be done it might as well be done in the light of day.

13,721. It does prevail even in the High Court in a certain class of case; you know that?—Yes. Of course I would give the county court judge the same power in a proper case to hear it *in camera*.

13,722. I think we have dealt with the rest of that point. As to procedure you have some comments to make?—Before we leave that, while it is in my mind, may I say this. I do earnestly hope the right of audience of solicitors in county courts will not be interfered with. I think that would have a great bearing on the expense of divorce. I do not want to make divorce too cheap, but we are considering the case of people who would have to scrape and fight very hard to raise the money even for trial in the county court.

13,723. How would you regard the danger that His Honour Judge Lindley suggested might occur, of work amongst those poor people getting into the hands of a very low-class practitioner?—I think the danger

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is more imaginary than real. Of course there is that class of solicitor.

13,724. Would that danger be averted if the Scottish system, of which we have heard so much, were adopted?—I do not know much about the Scottish system, but I do think there is some reason for suggesting that some assistance might be given to a very poor person.

13,725. The Scottish system involves the nomination by the court of solicitor and counsel?—At the expense of the Treasury?

13,726. No, voluntarily. There is a rule it is worked voluntarily by a certain number of solicitors and a certain number of the bar?—On very much the same principle as the Poor Prisoners' Defence Act. I had thought of suggesting that principle should be adopted.

13,727. I think in that Act there is some remuneration provided by the State?—Yes.

13,728. The Scottish system, if I recollect rightly from Lord Salvesen's evidence, is that there is no remuneration; it is voluntarily done to assist the poor?—I do not think that is fair to solicitor or counsel. It is a very unpleasant duty, and I do not think they ought to do it for nothing. I think something of the kind should be considered, especially in the interests of the woman, because the proposed limit of income could not affect a woman. A woman has no income, and it would be idle to apply for security for costs against her husband. He can give no security, and she would have to be helped to bring a proper case into court.

13,729. How would that help be given, according to you?—On the same principle as the Poor Prisoners' Defence Act, that on a suitable application to the county court judge he might make an order allocating a solicitor and counsel, and that the expense should be borne, in the same way as by that Act, as a Treasury prosecution.

13,730. Does that exhaust the points on the first part of your proof?—I think so.

13,731. Then you deal with procedure. Are there any points on that you think would be useful to suggest?—I think the procedure should be very simple, on the lines of an ordinary county court action. The petitioner should give particulars of the acts he alleges, and I think this divergence should occur, that the respondent should file some answer, which he does not in an ordinary county court action.

13,732. You suggest an interval between the commencing of the proceedings and the trial. Do you see any advantage in that?—Except in the interests of deliberation.

13,733. Would not that deliberation take place before the commencement of the suit?—I am afraid it does not.

13,734. It would have to take place if affidavits as to means had to be filed?—That is another reason for my suggesting the affidavit; it would involve some deliberation and determination which would be the result of reflection, I take it.

13,735. Would it be rather more advisable that any procedure that is adopted should cause the deliberation to take place before the proceedings begin, than to delay them when they do begin?—It would be better if it could be so, but you never know when deliberation will take place.

13,736. As to juries and damages, what have you to say?—I should not debar the summoning of a jury. I think, as the last witness said, there may be cases in which the jury might be of the greatest use. On hard questions of fact, which are the principal questions in a divorce suit, the jury would weigh the evidence.

13,737. Damages would be limited to 100l.?—No.

13,738. You think that there should be no limit?—I should prefer no limit. I think it ought not to be less than 500l., if any.

13,739. I take it that is based on this, that a co-respondent, even among the poorer classes, might be a rich man?—Yes. With the greatest respect to the last witness, may I deal with something he said? I cannot see any temptation to people to bring a divorce suit because they may get damages. The husband would

not get the damages. I only regard it as proper provision for the wife, who has been tempted by the co-respondent. The co-respondent ought to provide for her. He could not provide for her with 100l.

13,740. I think that exhausts the subject under question 1. With regard to question 2, the effect of separation orders and their extent, will you tell us what you desire to present on that head?—I have not much experience of separation orders. I do not like them being made in the police court; I do not like matrimonial differences being connected with the police; but, on the other hand, a separation order is very frequently the result of an aggravated assault or persistent cruelty, and I think the magistrates are as effective a tribunal as one could find. I am afraid there is no time to deal with such cases in the county court.

13,741. Some of your correspondents take a view about these being obtained too easily. What have you to say about that?—They think magistrates are rather inclined to be sympathetic to the women, and some think the magistrates are rather inclined to be weak, and leave it to their clerk to decide for them. I do not say I have any experience of that. I say I am told so.

13,742. You find the magistrates live among the people, and have considerable experience of them?—Quite so.

13,743. Have you formed a view as to these orders being temporary in the first instance?—I have, but I do not think it is a very valuable view, from want of experience. I am told in a large proportion of orders people come together again, and it does not seem to me to matter whether temporary or permanent.

13,744. May I read this summary of what you say: "On the whole, my attitude on this question is this. If this jurisdiction were now to be conferred for the first time, I should much prefer that it should be exercised by county courts alone, so that it should not be in any way tainted as a criminal proceeding, but I believe that, on the whole, it has not been unwisely or injudiciously exercised by magistrates, and I am not prepared to recommend that it should be withdrawn from them. A great deal of my dislike to their jurisdiction would be removed if magistrates (both stipendiary and others) would sit on special days for matrimonial causes only"?—I think that indicates my position.

13,745. The third question is about publication?—If jurisdiction is given to county courts, I feel very strongly that power ought to be given to the judge to control the publication of the proceedings, either by saying they are not to be published or by saying that the report must be submitted to the registrar of the court to be edited before it is published.

13,746. What is the view upon that point that is taken by the various correspondents?—Some one way and some the other. Some think it useful to make things public: some think it is a deterrent, which I do not, and some think it ought to be prohibited altogether.

13,747. You do not like these details of local scandals going into the newspaper?—I am told by the police court missionary he knows, for a fact, that young people in the mills will buy the paper to read a spicy divorce case, and, of course, that is a horrible idea. It cannot possibly do any good, and it does infinite harm.

13,748. As to question 4, with regard to the amendment of the divorce law, what have you to say as to that?—I do not feel inclined to put the sexes on an equality. I think adultery on the part of a wife is a very much graver matter than adultery on the part of a husband, but I think the period of desertion which would entitle the wife to a divorce might be reduced from two years to one year. I am rather changing my mind with regard to the adultery of the husband. I do not think one act of adultery ought to entitle the wife to a divorce, but I am inclined to think repeated adultery ought to.

13,749. It has been suggested to this Commission that the one act of adultery is possibly a greater source of danger to a wife afterwards, for reasons that are obvious, than where a person is regularly cohabiting with some other person. What do you say as to that?—Does your Lordship mean a source of physical danger?

13,750. Yes?—Possibly.

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13,751. Did that occur to you?—I had not thought of it.

13,752. With regard to the other causes that have been suggested, you are opposed to them?—Absolutely opposed to them.

13,753. (*Mr. Brierley.*) You are absolutely opposed to all causes except adultery?—I am.

13,754. That applies equally to cases of long-continued desertion?—Yes, certainly.

13,755. Take the case of a man or a woman, if you like, who has left his or her spouse and gone out of the country to America and remained there for four, five, or six years, as the case may be: do you say in that case the spouse who remains in this country should have no right to a divorce?—I do.

13,756. He or she would be entirely deprived of his or her partner for life?—She does not know that he will not come back next week.

13,757. She does not know it for certain, but the inference is that he does not intend to return?—But I have known intentions change.

13,758. Even in such a case as that?—I once made an adjudication of bankruptcy against a man for departing from his dwelling-house with intent to defeat and delay his creditors, and there was no doubt he had done so. He came back the next week and changed his mind.

13,759. Even in a case of that sort, you are still opposed?—Yes, because I take a higher stand than that. I do not want to say anything priggish, but I take marriage to be a divine institution, and there is no divine sanction for any cause for divorce except one. Even that is debatable.

13,760. That, I understand, is your opinion. You probably are aware that different States and countries differ very much on that?—Yes. I am old enough think for myself.

13,761. That is the personal opinion you have formed yourself?—Yes, very clearly. Then, on the question of expediency, I do not entertain any doubt even in lunacy. I do not think any case of lunacy can be said to be incurable. I was told a short time ago by a mental specialist of a lady under his control who, six weeks before I saw him, had been in a most degraded state, one of the most hopeless cases he ever had in his hands, and he felt almost hopeless about it, although he is a very sanguine man. When I saw him he told me the change was marvellous; she was writing letters to her husband and children, and he hoped in a short time she would be restored.

13,762. Did he go on to say whether the chances of returning were great?—Yes, he quite hoped she would be restored to her family.

13,763. Did he also say whether there would be any chance of hereditary tendency to insanity?—He did, but he could not say anything very authoritative about that. Of course, it would be possible, but he hoped by kind treatment and careful attention that she would be all right.

13,764. (*Judge Tindal Atkinson.*) Do you think it advisable in the case of insanity that if the husband or wife comes out of the asylum that there should be resumed cohabitation and fresh children born?—That is a very difficult question.

13,765. Supposing it is considered it is not advisable in the interest of the State, should not that form a ground of divorce?—I should not say it was a ground of divorce.

13,766. What remedy do you suggest?—Those people are married. It may not be desirable for them to live together, but they are married.

13,767. What remedy do you suggest?—I could not go beyond judicial separation or a separation order; I should prefer a separation order.

13,768. It has been said, and I should like to have your opinion upon it, that county court juries are an extremely inferior body of men. Is that your experience?—No.

13,769. You believe that to be an entirely unfounded statement?—I can only speak for my own district.

13,770. In your district?—In my district I certainly challenge it absolutely. I have had 37 years' experience

of my court, and the cases in which I have thought a jury has gone wrong I could count on the fingers of one hand.

13,771. The solicitors who practise in the court are perfectly well known to the judge?—Quite.

13,772. He knows what solicitor he can trust?—Quite.

13,773. And whom he cannot trust?—Quite. I should like to say this as regards the assistance afforded by solicitors, that I know not one nor two solicitors in whose hands I would place myself with quite as much confidence as in the hands of counsel.

13,774. (*Sir William Anson.*) The inquiries which you addressed to other registrars you seem to ask on one point, devolution?—No. I am rather letting the cat out of the bag, but one is absolutely opposed to the law of divorce. I think the others are in favour.

13,775. I understood you to say there was unanimity on one point?—I was speaking generally of the whole body of my correspondents.

13,776. In your view, that devolution should take the form of an application on affidavit to the President of the Divorce Division, and a reference back by him to the county court?—If he thought fit.

13,777. Your own view would not be in favour of giving jurisdiction generally to the county court judges?—No, because I think each case should be treated on its own merits, and that would overcome the difficulty of fixing a limit of means. You cannot fix a limit of means which would be fair to everybody. That could not affect the position of a wife, because she has no means.

13,778. The President, having the circumstances put before him on the affidavit, would decide that question?—Yes, and if he thought there was anything underhand in the affidavit, or it did not appear satisfactory on the face of it, he might remit it to the registrar of the local court for inquiry.

13,779. You think that would be a security against collusion, and provide the necessary deliberation before proceeding further?—Yes.

13,780. Would you, under any circumstances, allow this devolution to stipendiary magistrates?—I would rather not, but I would not oppose it.

13,781. The tendency of the stipendiary magistrates who have to do with separation orders is to develop the separation order into a divorce after a short time. You would not agree with that?—I am dead against that.

13,782. Would you assign that 1895 jurisdiction to the county court?—I should like to, but I do not see my way to it. I do not think a matrimonial quarrel is a police court case.

13,783. Nevertheless, it arises out of matter which is essentially a police court matter?—Yes.

13,784. The sort of things on the strength of which the separation order is made are the sort of things which would naturally come before the police administration?—That is the only idea which reconciles me to the police court.

13,785. And the machinery?—Yes, and the class of people, because the class of people to get separation orders in the police court are rather the police court class of people.

13,786. Having regard to the tendency of the stipendiary magistrate in the direction of divorce, that would not be in accordance with your views. You would limit the grounds of divorce to the existing grounds?—Yes.

13,787. Not extending them?—No.

13,788. Not even in the case of the adultery of the husband? We have been told among the working classes it would be great security for the faithfulness of the husband if he knew an act of adultery would be an occasion for divorce?—I do not think so.

13,789. And the disregard of the sanctity of the marriage tie arising from that?—For that habitual disregard I think the wife ought to be entitled to a divorce, but it is very difficult to define. I should be prepared to accept that if it could be carefully and cautiously defined.

13,790. (*Chairman.*) There is one other question I only want to ask your opinion upon, because we have

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other proofs about it; I do not suppose it is a matter of inquiry. From what do you derive your limitation of divorce to one cause?—From the Sermon on the Mount.

13,791. That, we are told, is only a question of construction?—It is, and I put my construction upon it.

13,792. I daresay you know there are a great many different constructions?—Yes.

13,793. I only wanted to ascertain your basis?—I have thought about it very carefully. I think there is a very unfortunate translation in one verse where the word "divorce" is used as a translation of ἀπολελυμένην, which is previously translated as "putting away." I think the beginning of the passage speaks of a woman who is put away for any cause other than fornication.

13,794. Have you made any special study of the actual state of Jewish law at that time?—No.

13,795. Or the actual state of things which prevailed at that time?—Except by casual conversations with clergymen.

13,796. I mean real study?—No.

13,797. I ask that because it will no doubt interest you to hear we are taking experts as to that state of things from amongst those who have made a study of it?—I shall be interested in reading their evidence.

13,798. And we have also the evidence of those who have made a special study of the words to which you no doubt refer. Would you put your views as definitely determined without hearing what they have to say?—Only definitely determined now in the light of what I know now. I hope, like a sensible man, I am open to conviction.

13,799. I meant to indicate that we have a great volume of extremely important evidence coming about it which will probably be interesting to you?—They will be much greater authorities than I am.

Adjourned.

Winchester House, St. James's Square, London, S.W.

TWENTY-FIRST DAY.

Monday, 30th May 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The Right Hon. The EARL OF DERBY,
G.C.V.O., C.B.
The Right Hon. THOMAS BURT, M.P.
The Hon. LORD GUTHRIE.

SIR WILLIAM R. ANSON, Bart., M.P.
SIR LEWIS T. DIBDIN, D.C.L.
SIR GEORGE WHITE, M.P.
EDGAR BRIERLEY, Esq.
The Hon. HENRY GORELL BARNES (*Secretary*).

Mr. WALTER CHARLES WILLIAMS called and examined.

13,800. (*Chairman*.) Is your name Walter Charles Williams?—Yes.

13,801. Are you a solicitor practising at 19, Borough High Street?—Yes.

13,802. You have had an intimate knowledge of Southwark and district as a lifelong resident and councillor for the borough of Southwark?—Yes.

13,803. Also as school manager; and have you had 19 years' experience as the poor man's lawyer in Walworth?—I have, and I have personally seen over 9,000 persons.

13,804. We will get a little more information about that presently; but is the Poor Man's Lawyer Association connected with the Robert Browning Settlement?—Yes.

13,805. You do not appear on behalf of the Settlement, do you?—No; I have from the very beginning discouraged litigation as much as possible, and out of all those cases I have not initiated proceedings half-a-dozen times. I find one is able to do a good deal and help them by simply telling them what to do.

13,806. But I mean your evidence is your own individual evidence?—No, hardly that; there are four men associated with me, and before that proof was written we discussed it together, and I may say I represent the opinion of the others.

13,807. Then you represent a sort of acting opinion of those who are connected with that Settlement?—Of the Poor Man's Lawyer Association; two barristers and three solicitors.

13,808. These 9,000 cases you have had before you—what is the nature of them?—Every conceivable thing; but a shockingly large number of matrimonial cases. I should be well within the mark if I said

20 per cent. referred in some way or other to matrimonial troubles.

13,809. Getting on for nearly 2,000 cases?—Yes, that would not be any exaggeration.

13,810. May I ask what is the general point they come about?—Generally the brutality of the husband; and in a large number, but not so many cases, where the husband is the injured party and the wife drinks or otherwise misconducts herself.

13,811. Have in those cases questions of divorce come up before you?—Repeatedly.

13,812. In what form—a desire to get it?—Yes, they come and say, "What can I do?" In no case could one say divorce, because one knows perfectly well they had not the money.

13,813. That is what I wanted to get at. Questions have been put about that; that there is not much demand amongst the poor for the relief divorce gives?—I have had plenty.

13,814. I should like to know your experience as to that?—There is an enormous demand. I do not want to be misunderstood. Of course hundreds of them would have been glad to get a divorce, but they did not come and say, "I want a divorce," because they knew they could not get it. They ask me the best advice I could give under the circumstances.

13,815. Then your view would be, assuming divorce could be brought within the possible range of such people, there would be numerous cases in which they would demand it?—I am sure they would.

13,816. You have first dealt in your proof with the courts by which people of moderate means could be assisted?—Yes.

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[Continued.]

13,817. Will you just explain what you have to say about that?—Well, in our proof we lean towards the stipendiary magistrate when there is a stipendiary magistrate, and where not, rather than the petty sessional courts having jurisdiction, we thought the county court judge might sit as a justice, not in his capacity of county court judge but as a justice, as a court of summary jurisdiction; but I have read the evidence very carefully given before the Commission, and though I still like the stipendiary magistrate, I am impressed by what has been said also about the advantage of the county court judge.

13,818. Is that with regard to removing the cases from the criminal atmosphere?—Yes, but as against that, I think the stipendiary magistrates are more accustomed to deal with cases arising from moral delinquencies than the county court judges; and of course in divorce that does arise.

13,819. Of course, the county court judges would soon acquire that knowledge?—Well, I do not wish to limit them at all. May I say with regard to that, the procedure is much more simple before the magistrate, and if any legislation is to be of help to the very poor, the procedure must be of the very simplest, otherwise they have to get help.

13,820. Whatever tribunal it is before, there is no reason why it should not be of the simplest character?—Quite so.

13,821. Then you say you have “come to the conclusion that in administering the Summary Jurisdiction (Married Woman) Act, 1895, and the Licensing Act, 1902, lay magistrates are apt to allow their judgment to be warped”?—Yes, we thought the stipendiary magistrates were the most competent, if I may use the word.

13,822. Have you some objection to the lay magistrates?—Oh, yes; because they do not understand it. I have not had much experience in the provinces, but what little I have, it is uncertain what effect given evidence will have. One can gauge the effect (I speak it with all respect) of certain evidence before the stipendiary magistrates' bench.

13,823. You mean the trained legal mind is more capable of appreciating evidence?—Yes.

13,824. And you find that the lay magistrates are changing?—Yes.

13,825. Do you regard them as a satisfactory tribunal in any of these cases?—Oh, no; not at all.

13,826. You do not suggest any alteration conferred by the Act of 1895, as to courts of assize and quarter session?—I confess that particular part was put in in deference to Dr. Burrows, one of my colleagues. It is a very small matter. I do not understand it.

13,827. Then the next point is that the limit of six months within which the occurrence founds the jurisdiction acts harshly, and that there should be power to extend the time?—I have seen many hardships owing to the six months' limit in Jarvis's Act.

13,828. I suppose that is because in a great many cases of cruelty a great deal may have occurred before, and not much within the six months?—This is what happens in many cases. A woman leaves her husband because of his cruelty, but she is able to do something for herself. As the child or the children get older they get more expensive, and she has a less wage-earning capacity, perhaps, and then she says, “Why should not my husband do something?” and then she is too late. I had an awfully hard case of that where the woman's husband was in the South African War. Mr. Baggalley was very sympathetic; I took her down to Woolwich. May I tell you the facts?

13,829. If they are a good illustration?—Yes, I think so. She obtained a separation order. So as to keep the home going for the child she went back; the man was worse than before, and she left him and kept herself. Then, being in a situation, she did not trouble about him. He then went to South Africa; while in South Africa half his pay was sent automatically to her through the War Office. When he came back she tried to get maintenance from him. Of course she had not been deserted; it was not desertion, because she left him, and the cruelty was too old, and the child

was five years old. All the surroundings of that case were very interesting.

13,830. Have you found any detrimental results happening from separation orders—I am now passing to the next part of your proof?—I think amongst the poor it almost inevitably leads to it. If the man has the children, he must have a woman to look after them. If she has them, then she wants the protection of the man to keep the home going.

13,831. Has a separation under the Act been considered by these people almost as amounting to a divorce?—No, I do not think so.

13,832. You say, in your proof, “Partly by reason of a widespread idea that a separation under the Acts of 1895 and 1902 operates as a divorce (the ‘poor man's divorce,’ as it is frequently called), but much more by the combined pressure of economic conditions and natural desires, separation orders, in our experience, undoubtedly lead to a great deal of ‘immorality.’ Is that correct?—Yes. May I explain it in this way. Though I do not think that at the beginning they looked upon it as tantamount to a divorce—and in a large number of cases there is at the back of their mind an idea that they may come together again—when it has gone on for two or three years, then they say: we have not seen one another, what are we to one another?

13,833. And they treat themselves as divorced?—Yes, they are almost obliged to.

13,834. What I should like to know is—not as a mere matter of opinion, but as a matter of experience—do you find that these separations lead to immorality?—Oh, in a large number of cases. Of course, one cannot follow 5 per cent. of the people I see as the poor man's lawyer; but I live in Walworth, and my parents did public work there, and I know a large number of people there, and I know many cases where there has been a separation long continued, and the woman has picked up another man, or the man has picked up with another woman.

13,835. Would you suggest any limitation in the period of separation orders if made at all?—I think a separation order should be for a short time, and then renewed—six months or twelve months, say.

13,836. Or if there were causes for a divorce, a divorce granted?—Yes, if the parties did not come together again, then, I think, after a time—I will not say how long—two or three years—then I think the marriage might be dissolved.

13,837. You suggest that the magistrates should have some discretion?—Yes.

13,838. As to what?—Well, a boy and girl marriage, and the wife gets a pain in her temper and throws something at him, and he punches her head, and then they go and get a separation, or try to. I do not think in a case like that the magistrate should be bound to grant it.

13,839. You would make it a discretion, and not a right?—Yes. Not too much discretion, because one would like to feel that you are sure that having proved certain facts you are entitled to your order; but I think the parties might certainly try one another for a year.

13,840. That amounts rather to a limited order for a time, and then to see what they will do?—Yes.

13,841. Do you take any view as to whether the increased opportunity by local courts for obtaining divorce decrees would tend generally to the benefit of the country or not?—Among the poor I am quite sure it would be a very great boon, because there are hundreds of quite decent working men and quite decent working women who would like to be able to be free from the present tie, and have an opportunity of making a home, and owing to their being unable to marry again there are hundreds who are debarred from ever having a home.

13,842. You sum it up thus: “The increase of facilities for divorce would, we think, render real home life possible to many who undeservedly are deprived of it, and considerably decrease the existing causes of immorality among the lower classes”?—I think so; because, instead of having to live together if they want companionship, they could marry.

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[Continued.]

13,843. You note there are objections to this?—Quite so.

13,844. And you do not wish to minimise their importance?—I treat the religious aspect with great reverence, and I quite follow the arguments, but I think there are considerations other than that.

13,845. Then you sum it up thus: "We, however, think that divorce should only be possible where it is thoroughly clear that the parties in question are quite unfitted for life together." That is the importance of it?—Certainly; I do not advocate for temporary or slight differences dissolving the marriage bond. Of course, it is a very serious thing. But when it is clear that life together is absolutely impossible—

13,846. Have you formulated any view as to what causes the State might consider to be sufficient to establish that impossibility?—Yes; adultery, of course, and both sexes upon a par; prolonged desertion whether voluntary or under an order.

13,847. By voluntary you mean against the will of the party deserted?—Yes, I mean when a man runs away, and habitual criminality and insanity, if it is permanent.

13,848. What do you say about the cruelty case, where life is impossible through it?—Yes, I confused that with the other; of course, very bad cruelty, certainly.

13,849. I do not know whether you express any view about drunkenness?—My own view is, that I would not make that a ground for divorce. A man married for better or worse, and some of them get the "worse," and have to put up with it. Unless the drunkenness, as it very frequently does, becomes insanity, or leads to the cruelty, which it frequently does, I do not think drunkenness alone is sufficiently bad to justify the dissolving of the marriage tie.

13,850. With regard to these orders, whether for divorce or separation, I understood you to say you would place the sexes on the same footing?—Yes. I feel it is a very difficult question, but on the whole, I think both parties should be able to have a run for their money, so to speak, on the same facts.

13,851. Is that so in both courts, that the grounds available should be the same in the High Court or any court that acts in these matters?—Yes, quite so. May I add to that that I and my friends do not consider that an isolated or impulsive act on the part of the man is such an injury to the wife as an impulsive act of adultery on the part of the wife to the man, for the obvious reason, that she could not have to keep another woman's child through it; and so, though the injury is not so great, I think the weight of argument is, that both parties should be able to go for relief on the same facts. But the husband, if he is the respondent and the wife gets a divorce, has to pay permanent alimony, or he may have to pay permanent alimony; and I think the court might have jurisdiction in that case to consider the extent of his offence.

13,852. You mean the court should have, both at the time, and perhaps afterwards, a wide discretion as to dealing with matters?—I have a case in mind where, simply frivolously or vexatiously, the wife has refused to sleep with her husband for nearly three years now; she is not an invalid, and they have two children, and she will not share his room. It seems rather hard, if that man committed an isolated act of adultery, that he might have to pay his wife a large sum for permanent alimony.

13,853. Would you in such cases of refusal treat that as equivalent to desertion?—It is too difficult a case for me. I do not think it is desertion, and it is so enormously difficult to prove.

13,854. Now with regard to publication of reports; will you express the view you and your colleagues have formed about that?—We would not muzzle the press, but we certainly think if some scheme could be devised to stop the publication broadcast of all the nasty details, even in the interests of the witnesses and the parties themselves, it would be good. It seems very unfair that all one's private affairs should be dragged out to the public; I do not see what public end is served by it.

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13,855. Does your experience amongst the people you are familiar with lead you to think that publication affects their actions at all?—With the classes one gets there, as far as our poor man's lawyer experience goes, I do not think it matters at all. But that is not all my experience; I have had other. This is what I mean. The bricklayer's labourer gets fined half-a-crown for being drunk, and it does not do him a bit of harm. A young doctor goes to a dinner and dines rather well, perhaps, and on the way home gets into some little trouble; that spoils his practice, and he has to go to another part.

13,856. You think the judge should have some power in all these matters?—Certainly.

13,857. Do you think the obstacle in the way of the poor at present is overcome by the procedure *in forma pauperis*?—I have had a lot of experience in that; I have tried to coach dozens of people to do it, and only one man has ever been able to carry his case through. He was a painter, and a very intelligent man. I helped him in showing how to knock the affidavit verifying petition, and the petition into shape; but he was a man one could teach, and so well did he do it, that when the case came on he was not in court, and it was struck out, and he made an application by himself, and got it reinstated, and got his decrees nisi and absolute.

13,858. Apparently the intelligent man had to come to the poor man's lawyer to get it on its legs?—Yes. You see there are many solicitors, I think, who get the order to proceed *in forma pauperis*, and then get as much out of the people as they can. I do not say that is wrong; I am not censuring my professional brethren; but I should say that either a man was a pauper or he was not; he could either pay me or he could not pay me.

13,859. Have you experience of costs of the proceedings?—Yes, an undefended case in London where there is no particular expense for witnesses, I would put at 25*l.* or 26*l.* One could very well make one's bill more.

13,860. I think Mr. Musgrave made it considerably more than that?—Yes, I have no doubt a bill would tax for more than that, but if the witnesses were not very expensive, if it is a simple case, it is a short petition and a short affidavit verifying it, and there is no appearance, and it is set down.

(Chairman.) I think that is practically all there is in your proof that I need ask you about.

13,861. (Mr. Brierley.) If the county court was granted jurisdiction in divorce, would you be in favour of the whole of the applications for separation orders being transferred to the county court?—No; I think the stipendiary might well keep his jurisdiction in the separations.

13,862. In places, I mean, where there is no stipendiary magistrate, which, of course, is the case in most parts of the country?—But so far as the existing Act—the Married Woman's Protection Act—goes, I think they might leave it where it is.

13,863. You would leave that as it is—to the lay magistrates?—Because they have done it as well as they could, and rather than alter the practice I leave it.

13,864. Then I understand, as far as the separation orders are concerned, you would really place the husband on exactly the same footing as the wife?—I think so.

13,865. Give them separation orders on the same ground?—You see it is very often quite as hard on a decent man with a bad wife as it is for a decent woman with a bad husband. Only last Tuesday a man came and brought me a double handful of pawn-tickets, things that his wife had pawned, and she did not drink to excess, and as far as he knew she was not unfaithful; and what she did with the money or why she did it I do not know.

13,866. I do not quite know really on what ground that would be if you would put the husband on the same footing as the wife. But at present, and ever since the Act of 1857, and before that, of course, husband and wife have been on the same footing with regard to judicial separations?—Yes.

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[Continued.]

13,867. And there is no reason, as far as you can see, that they should not be on the same footing so far as summary separation orders are concerned?—That is so.

13,868. There is only one other small point with regard to the six-month limit. Do you find it a common matter that wives have suffered from not having come to the court within the period of six months?—Yes, I have had a good many cases in the way I said.

13,869. They really have not known that it was necessary to come within the six months, and therefore, the need for separation not being immediately necessary, they have omitted to take their remedy?—Precisely so.

13,870. And that you think is common?—Quite so.

13,871. (*Lord Guthrie.*) You told us that the name of the association is the Poor Man's Lawyer. What class do you include under the head of poor men?—By a poor man I mean a man whose family would go without some appreciable necessary out of the week's wages if he paid 6s. 8d.; a working man; a man earning 30s. a week.

13,872. Are they only working men, skilled or unskilled, or would clerks come in?—Clerks! Sometimes a clerk is much poorer than a mechanic. Many clerks who look respectable have to do it on 27s. and 30s. a week; and sometimes shopkeepers with high rents; I have been glad to help them, because I have known they were literally in want of pence by the time the rents and rates were paid. One has to use one's experience as to who are poor men, but I do not think we are much exploited; I have been there too long.

13,873. We are told a remedy is wanted for two classes: those like clerks, who have a fairly good income of 2l. or 3l. a week, and who are still unable to afford High Court expenses; and, secondly, working men with about 20s. a week, who cannot think of beginning a divorce now. Do you agree we should consider both these classes?—I cannot see any reason why a man's income should affect the administration of justice.

13,874. It has been said by some witnesses that divorce should not be made too easy or too cheap. If divorce is a remedy for a legal wrong, do you see any reason why the remedy for a legal wrong should not be obtained easily and cheaply in a civilised country?—I do not think divorce should be too easy; it should be made reasonably difficult; but when it is to be given, then it cannot be too cheap.

13,875. Then must not we distinguish between two things which many witnesses seem to confuse; the cause which the State is to recognise should be a very serious and definite cause?—Quite so.

13,876. Divorce in that sense should not be too easy?—Quite so.

13,877. Once the cause is recognised as sufficiently serious, do you see any objection to making the remedy for that wrong easy?—No; on the contrary, if the State agrees it is a wrong, and that there should be a remedy, then I say the remedy cannot be too cheap, because it should be within the reach of the poorest.

13,878. There is another popular phrase which leads to great confusion, and you have used it yourself. People take each other for better or for worse. I take it they do so in two senses: in poverty or wealth, in sickness or health. Your view is, I take it, that they do not take each other for better or for worse in the sense of chastity or adultery?—No, because that goes to the whole marriage contract.

13,879. Nor in the sense of adherence or desertion?—Desertion, again, goes to the root of the marriage contract.

13,880. Nor in the sense of sanity or insanity, if the insanity is sufficiently prolonged or incurable?—Well, I think that also goes to the root of the contract, because an insane person cannot be a companion.

13,881. That being so, do you think people take each other for better or for worse (for you seem to say so) in the sense of drunk or sober?—The exact line where a man says that the goods do not come up to the representation, or up to the sample, is very difficult to draw.

13,882. Take habitual drunkenness as defined by the Act?—Yes.

13,883. What do you say to that case?—I do not think that that should be a ground to dissolve the marriage tie until the habitual drunkenness has led (as it will) to insanity or to sufficient cruelty.

13,884. You think there are few cases of habitual drunkenness which would not be comprehended under one of your other heads, or comparatively few?—Oh, certainly; there are many men or women who are (to use a vulgar expression) drunken beasts, but they are not violent, neither are they mad; and I do not think that is sufficient ground to dissolve the marriage tie, because the drunkard may always pull up—there is always the chance, and he may be a very decent man when he is sober.

13,885. Is there any more chance in a considerable number of drunkards known to you of the drunkard pulling up than there is in the case of the certified hopeless lunatic recovering?—Oh, yes; because a hopeless lunatic is mad until he fortunately dies.

13,886. We are told not; we are told it is quite a common occurrence for lunatics considered by medical men to be hopeless to recover?—They come out just long enough to beget another child, and go in again.

13,887. Then is it your view that in the case of a habitual drunkard—what you called a drunken beast—the woman in her own interests or the interests of the child is bound to continue cohabitation with that man?—I feel the difficulty of the point, and I can well understand another man thinking otherwise; but my own view, and certainly my colleagues' view, is that if you admit that as a ground for dissolving the tie, there are other things one would suggest also.

13,888. Such as?—Oh, I am not prepared with a list at the present moment.

13,889. With regard to the poor man's lawyer, do you find that is an extremely useful agency?—If it is prudently conducted. I am afraid there is a tendency to sort of go round and say, "Have not you got any 'trouble you can bring to us,' in some of the settlements.

13,890. But, prudently conducted, it is an agency that ought to exist, and is doing excellent work?—Yes. One has given advice on all sorts of things, lots of times; not only legal.

13,891. But I am referring to matrimonial troubles?—Yes.

13,892. In what towns do these agencies exist at present?—I believe Mr. Barry and I were the first two that settled in London, unless Mr. Blott is a few months my senior; and I and an old schoolfellow, who is now dead, sat there together for some 14 years; and then several young Cambridge men joined us, and I began to find it was rather a tie too; and that is how the present scheme came about.

13,893. Then do they exist in other towns besides London?—Oh, yes; and in Scotland there is quite an elaborate system. Mr. Coldstream has given evidence, and he can describe it better than I can.

13,894. Would it be very desirable that such agencies should exist in all considerable towns?—Everywhere there is a parish doctor there is a district medical officer; and sometimes a legal adviser is necessary to make life worth living.

13,895. Does it appear to you that system should be introduced in England as it is in Scotland?—I think so; there is no doubt that in some cases poor man's lawyers are used as rooms for touting agencies for people who conduct cases, and not always cases that ought to be brought.

13,896. Supposing the system were in the hands of the law societies, would that meet the case—who would appoint annually so many of the younger members to act?—Why the younger members.

13,897. Well, that is a detail; would appoint members?—Yes, men of experience.

13,898. Would that in your view meet the case?—I think it would be a very great advantage—to treat it as necessary, the same as medical advice is treated as necessary.

13,899. (*The Earl of Derby.*) I think I missed the first part of your evidence, but did you say whether you thought penal servitude should be a ground for

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[Continued.]

divorce?—I did not use the word penal servitude, but I said habitual criminality.

13,900. Do you have many cases of that?—No, I have had very little experience of the criminal side; less than one would have imagined. I suppose it is known that it is no good going down to Browning Hall in criminal cases.

13,901. But have you had many cases of the woman coming to you where the husband is in penal servitude?—Oh, yes; when the husband is away—certainly.

13,902. And asking for advice?—Yes. I remember a very hard case. A flower girl met a man and got married to him quite properly, and the same afternoon they were arrested for passing bad money. He went to prison, and it was his third term it appeared, and she came to know if she was really married.

13,903. There is no redress for her?—The marriage was not even consummated. What her position was I did not take the responsibility of telling her.

13,904. (Mr. Burt.) Just one question. I understood you to say that now divorce is merely a privilege of the middle and upper classes. That is mainly on the ground of expense, I suppose?—Quite so.

13,905. And you think the procedure *in forma pauperis* does not overcome the difficulty?—It is quite illusory; as an assistance it is nothing.

13,906. The expenditure probably in all these cases will very much exceed the allowance?—What allowance?

13,907. Is not there a certain allowance in the case of those who come under the *in forma pauperis* system?—No; it is simply that you do not have to pay court fees, and then the proceedings are permitted to go on without the paying of any court fees. Then the court assigns a solicitor and barrister to act for the litigant for nothing if they can find them ready to take it on.

13,908. But necessarily the expenditure is such that a very poor man cannot meet it?—Quite so. It would be all right if he is living in London; but if he has to bring four witnesses up from Penzance or Newcastle, the railway fares and the keeping the people up here is more than he can afford.

13,909. And you suggest that in certain cases where there is a stipendiary magistrate he should have jurisdiction in divorce cases so as to partly meet the difficulty?—I would rather say some local court, and leave it to those wiser than I to say what court. The stipendiary magistrates in my humble judgment have administered the Married Women's Act exceedingly well, and I do not see why they should not be trusted with a little more jurisdiction; but I can understand that the county court might appeal to some as being a more dignified and more suitable tribunal. But I have in my mind's eye the annual county court practice—a book that thick; there is no annual practice for the petty sessions. It is much more easily understood by the people.

13,910. In the case of giving jurisdiction to the county court judges it has been put as an objection that that would induce a diversity of decisions?—I read that in some of the evidence, but I could not follow that myself. There have to be many court judges, and it is not suggested there is a diversity of administration of justice generally. Somebody said something about the diversity of the way the judgment summonses were dealt with; but if any jurisdiction were conferred on the county court it would be well defined, and their powers clearly pointed out, and if the facts were proved the litigant would be entitled to certain ascertained relief. I do not see that it would be a question of the particular fancy of the learned judge.

13,911. You do not think that would be an insuperable difficulty?—I do not at all. There must always be a certain amount of diversity between men and men, but they administer the common law.

13,912. (Sir William Anson.) I understand you to say that the separation orders, as at present dealt with, led to conduct which would justify divorce. That is to say, a man left alone with children to look after wants a woman to come in and take care of them and the man, and a woman in the same way wants protection?—Yes.

13,913. Is that the case with separation orders of whatever duration?—The longer the order has lasted the more the necessity for what I have pointed out.

13,914. Then would that be remedied by separation orders for a short term, renewable at the discretion of the magistrate?—It would not be remedied by a separation order. The remedy for it would be that the separation order might grow into a complete dissolution, or be the ground for the pronouncing of a decree dissolving.

13,915. That would mean that the separation order must be for a short term, that the magistrate might have an opportunity of considering the matter?—Not only the magistrate, but that the parties might have an opportunity of reconsidering. I think it is quite possible that if the parties knew that it was for six months, that the very fact of knowing that they would have to go up again might tend to induce them to settle their differences if it were possible.

13,916. So that the limitation of the period would tend to mitigate the evil of leading the man and woman to conduct which would justify divorce?—I am afraid I do not quite follow your question there, Sir.

13,917. Well, if the separation order is only for a short time, neither the man nor the woman would have the excuse of acting as you have described?—Quite so; not for the first three months or six months, say; and if it were continued, then the trouble exists, and it exists the more acutely the longer the separation lasts.

13,918. In what direction would you give more discretion to the magistrate with regard to granting separation orders. I think you said the magistrate needed wider discretion?—I meant in this way; that applications made very soon after the marriage might well be discouraged—the application by comparatively young people, though perhaps they have been married a year or two. One learned magistrate in London is very careful how he grants a separation to young married people; you have to give wonderfully strong evidence, and then he does not believe it if he can help it—for young people.

13,919. Then as to jurisdiction; you would very much enlarge the jurisdiction in granting divorces; I mean you would give it to other courts than the present court?—Yes; I do not see that it should be confined to London.

13,920. And you would prefer the stipendiary magistrate to the county court?—I confess I have been rather surprised to see so much discussion about what court. I confess I think it is a very little matter whether the county court or the stipendiary magistrate does it as long as somebody does it.

13,921. But you would desire uniformity of action on the part of all these courts as far as possible?—Obviously so.

13,922. Then you would extend the grounds on which divorce should be granted?—On the lines I have said.

13,923. Simply adultery in the case of the man, and prolonged desertion, voluntary or involuntary; that is to say, as the result of imprisonment or not?—Yes.

13,924. Habitual crime, cruelty and insanity. Would not every one of those cases leave a wide discretion, or, at any rate, the opportunity for variable decisions in the case of different magistrates?—I do not think so; not more than the present Act—The Married Women's Maintenance Act; a married woman whose husband should have been guilty of persistent cruelty. One would say that allowed a very great divergency of opinion as to what was persistent cruelty, but as far as London is concerned, I have not had much difficulty in that. The magistrates seem to agree as to what persistent cruelty is; persistent is persistent.

13,925. Suppose you sweep away cruelty as a ground for divorce, and make adultery in the case of the man simply the one ground on which the wife might obtain a divorce; that would be always a fact, would it not?—Yes—which, if proved, would entitle the petitioner to a divorce.

13,926. But habitual crime would be a matter of degree and discretion?—No, because if the draftsman of the Act took the trouble to think what he was doing he would say what number of convictions, how many

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years of sentence should constitute it; if a man is away for ten years or has been five times convicted; it only means a little schedule.

13,927. Then as to cruelty. Surely different men might have different views as to what justified divorce on the ground of cruelty?—Cruelty for the present separations is pretty well settled, and cruelty for the purpose of the Divorce Court is settled by so many decisions that the practitioner knows pretty well where he is for the purpose of cruelty. Of course, there is much that is cruelty for the Divorce Court that is not for the police magistrate. I think cruelty, for the purpose of the police magistrate might be slightly extended. I have had many hard cases where the woman has never been hurt. One man I remember used to pass his evenings in spitting at his wife; just look at her and make a filthy remark and spit at her, and do it continually, but never hit her; and he always made a point of turning round when he went out of a morning and said "Good-bye, dear," so that the lodgers upstairs or downstairs thought what a kind good man he was.

13,928. And the judge would have to decide whether or not that constituted cruelty?—I do not think that need be left for a matter of individual decision to the judge. An Act can state what is cruelty.

13,929. Then you think divorce should only be possible where it is thoroughly clear that the parties in question are quite unfitted for life together?—Yes.

13,930. That must be a matter of discretion, must it not?—Yes, of course, you cannot imagine an act which does not give rise to some very difficult positions. You would always have some difficult cases where you could not quite say which way the balance went.

13,931. I should like to have your opinion on this point. These people, as you say, do not enjoy the comforts of a home, and they are entitled to that?—Yes.

13,932. And they would obtain them if divorce were more readily granted?—Well, they would have a chance of getting them.

13,933. And they could re-marry?—Yes.

13,934. If divorce were so readily granted, would the home be permanent?—I do not see why it should not be. When you say "so readily granted," I do not mean that divorce is the sort of thing you should go in and pay a fee and get it; but when an injured party has his or her freedom, then having got his or her freedom, they are able to start another home. At the present time they would not be; so the man and the woman lead an anomalous existence, or else they live together in adultery, and the children bear the stigma of bastardy.

13,935. I only wanted to know your view. Supposing a law such as you desire be in practice, would not it after a term of years produce such an impression of the readiness with which marriage could be dissolved, that no home of that class of life could be said to be absolutely permanent?—I do not fear that at all, Sir. I do not think it would lead to more immorality, and I do not think it would have a prejudicial effect, because (I am assuming it would be a prudent Act and prudently administered) there would only be relief granted where serious wrong was done to one party; and then, surely when you have established that a wrong has been done, it is only common sense, as well as justice, that the parties should have all the remedy that is possible; that having been deprived of one home, they should be able to get another. But I do not think that would make the home less highly valued.

13,936. No, but whether the facility for divorce might not make any home precarious because the parties might feel that if the judge were satisfied that they were unfitted for living together they could again

be free. I am not expressing an opinion of my own, but I want the advantage of your experience?—I do not think it would. But even supposing it did (which I do not admit) you are inflicting an awful injustice on hundreds of people in not letting them have a remedy which I and others respectfully suggest they should be entitled to and which it would be in the interests of the State to let them have.

13,937. You think the chance of it would be worth the risk?—I certainly do.

13,938. Do you find many of these troubles arise from hasty marriage?—Oh, quite so. I have commented on that in several remarks as to the young people.

13,939. We have had evidence suggesting that some method should be adopted for bringing home to the couple (or to the man) that he was undertaking a legal obligation as well as going through a religious ceremony?—I think we might have some sort of restriction like they have in France, that a man cannot get married when a boy; that there should be some consent to be obtained, and to be obtained effectively; I mean the check should be an effective check. I do not see why a man should be able to get married at 18 or 19 and get a family that the State have to keep.

13,940. (Chairman.) I should like to ask you this. Would you suggest that it should be the same tribunal that dealt with the cases, whether separation or divorce?—Well, in my proof I had in my mind the same tribunal; but having read the evidence that has been given I can see there might be some advantage, that though the magistrate made the order for a separation, yet the county court judge or whoever the other divorce tribunal might be, might decree dissolution of the marriage tie; but with profound respect I cannot see that it is a matter of any particular importance what court does it. The police magistrates have quite as much the confidence of the public as the county court judges have, and perhaps more.

13,941. You were asked, I think, by Lord Guthrie about drunkenness. You know the definition there is in the Act of "habitual drunkard"?—I was looking it up the other day, but I have forgotten it.

13,942. A source of danger to themselves or others, and unable to manage their own affairs. That is the sort of thing. That has to be found. If that has to be found by the tribunal would you see any objection to that being a ground for divorce?—I do not see any objection, but intemperance does not seem to me such a serious matrimonial offence as the others we have mentioned.

13,943. Not though a man may be a source of danger to his wife, though he has not been cruel?—Anyone when drunk is a source of danger, because he comes home and is savage, and may do something which he would not think of doing when sober; so anybody when drunk is a source of danger in that way.

13,944. One other question with reference to what Sir William Anson asked about a marriage requiring some certificate or consent from the parents, or some check on improvident marriages. Have you considered whether that should extend to physical and mental fitness for marriage?—Yes, that is a point —

13,945. I ask you that because there has been legislation in the United States on the subject?—Yes, I have discussed that matter with many doctor friends repeatedly. Of course, it is quite obvious—you only have to go through the streets of London in a crowd to see dozens of little undersized misfits who are no more capable of reproducing their species to any effect, i.e., advantageously to the State, than flying; but I do not know how that is to be done.

(Chairman.) Thank you for your evidence.

Mr. JOHN ARTHUR HELTON DANIELL called and examined.

13,946. (Chairman.) You are a solicitor?—Yes.

13,947. Partner in the firm of J. L. & E. T. Daniell, of Bristol?—That is so.

13,948. Have you for some years past assisted the Poor Man's Lawyer Association at Bristol?—Yes.

13,949. Known as the Bristol Free Legal Dispensary?—I have.

13,950. That was founded some eight years ago by Mr. Sandford D. Cole, solicitor, of Bristol?—That is so.

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13,951. Your services at first were merely those of advising applicants, usually with Mr. Cole, and sometimes alone?—Yes.

13,952. But in 1907 you became honorary secretary to the dispensary, in succession to Mr. Cole?—Yes.

13,953. Have you attended, on an average, about 26 times a year at the Broad Plain House, Bristol, where the dispensary is open on Thursdays from 7.30 to 9.30 p.m.?—I have.

13,954. With the object of meeting poor people who want assistance?—That is so.

13,955. Have you acted during that time as one of the honorary solicitor advisers and secretary?—I have.

13,956. I think you have set out in your proof your annual reports. Perhaps, without going through that, it can be put in the note. There are from 300 to 500 cases per annum which you have. They average about 550 the last two or three years?—Yes.

13,957. And between husband and wife you give something ranging from 34 in 1905 to 60 in 1909?—That is so.

13,958. That rather tends to show that the question of husband and wife is increasing in number?—Yes.

(Chairman.) I do not think I need go through this. We can have that table set out in the notes. (The following is the table referred to):—

1905	out of 331 cases,	34	related to husbands and
			wives.
1906	"	417	" 35 " " "
1907	"	476	" 39 " " "
1908	"	528	" 56 " " "
1909	"	544	" 60 " " "

13,959. What are the points in these matrimonial matters that call for your attention?—They are chiefly dealing with maintenance and separation orders—the greater number of them.

13,960. Have you had anything to lead you to a conclusion as to whether those are cases in which divorce might be obtained, if within the means of the parties?—I must own, in the majority of cases, in dealing with separation orders that come before me, that the question of adultery was not apparent on the surface; it was usually merely a question of cruelty.

13,961. Adultery is in no respect a matter that can be dealt with in those?—No; adultery was not usually mentioned by the husband or wife. In some cases it was, but only in a percentage of cases.

13,962. I suppose the causes for which they can get an order is known?—Yes.

13,963. Have you been able to form an opinion whether there is any demand for facilities for divorce if that were obtainable?—My impression from the experience I have had, which, compared with the last witness's, is small of course, is that there is a demand, certainly.

13,964. You give a case here in your proof of 1907. I do not know that I need go through the details of it, but it was a case for divorce?—Yes.

13,965. And you were advised that proceedings would have to be taken in London?—Yes.

13,966. You state in your proof that you consider the ordinary cost would be 50*l.* or 60*l.* Are you speaking of costs from Bristol?—Yes, from Bristol. I think, if I may vary that slightly, that is a little excessive. I worked out the actual numbers of attendances and letters in a case I took up *in formâ pauperis*, which was undefended, and would be about as cheap as possible if it had been done in the ordinary way, and I think the solicitor and client's costs would have come to between 45*l.* and 50*l.*

13,967. *In formâ pauperis*?—Yes; taking a case I had *in formâ pauperis*, if it had been charged for in an ordinary way, charging attendances, letters and brief, it would have been 45*l.* or 50*l.*

13,968. Have you had *formâ pauperis* cases in London?—Only this one case that I took from Bristol, which was heard in London.

13,969. What did that cost?—Those are the actual attendances in that case. It was no good having an order for costs against respondent, as he was out of work every other week, and I never made out any bill.

13,970. You did the work?—Yes.

13,971. And if you had been paid it would have cost 45*l.* or 50*l.*?—Yes.

13,972. But nothing was paid?—No.

13,973. It was provided for by you?—The witness borrowed the travelling expenses; the bare out-of-pocket expenses in London and Bristol, namely the inquiries and so on, were about 10*l.* and 6*s.* of that is still unpaid.

13,974. Were the witnesses included in that 10*l.*?—Yes, 5*l.* or 6*l.* were the fares of the four witnesses, the petitioner, and myself, from Bristol to London and back.

13,975. And the rest was what?—There were the inquiries and postages, and I think I paid some clerks' fees.

13,976. Your agent in London, Mr. Blott, consented to act free of charge in that case?—Yes.

13,977. And Mr. Bousfield acted as counsel free of cost?—Yes.

13,978. In that way you got that through with an outlay of 10*l.*?—I put 10*l.* as a rough estimate, but it was under that.

13,979. But assuming it was carried through in the ordinary way, it would be 45*l.* or 50*l.*?—Yes.

13,980. I see you took notes of evidence, prepared the case for application, and counsel approved, and the application was duly made at the principal registry. Was that the application to sue *in formâ pauperis*?—That was the application, yes.

13,981. What is this point about the affidavit as to means?—I think if I read an extract from the letter, it will show what occurred: "I have seen the official thereon, and am told that the affidavit in the case of an application by a wife, must state the joint income, notwithstanding the fact that the husband may not be living with, or contributing to the support of his wife; and, further, that if the joint income exceeds 25*s.* per week, it is no use lodging the application. I must say that in this case the rules relating to procedure *in formâ pauperis*, seem to nullify any possibility of their being exercised on behalf of a wife petitioning for dissolution of marriage; and where the wife has no means, the solicitor would have to take the rather poor chance of getting his costs out of the husband." In this case we had to wait till the husband was out of work. The wife carried on a small general shop which produced not more than 10*s.*, and the husband was in and out of work; he would get drunk for a week, and perhaps was in work for a fortnight, and then out for three weeks. He never paid anything for his wife's support, but if we lodged the application when he was earning 15*s.* a week, that would have been no good at all.

13,982. You carried that case through?—Yes.

13,983. Do you think that could have been carried through if you had not acted voluntarily, and the agent and counsel also?—I am absolutely certain not. The petitioner was a woman of ordinary intelligence, but very nervous and very shy, and would never have dared to go into court alone.

13,984. So that you do not approve of the system of *in formâ pauperis* as it at present stands?—No, I do not, as it at present stands.

13,985. I see you say you are bound to make up your mind you will never undertake another case?—Yes, until I have sufficient means to give a lot of time to that sort of thing.

13,986. What is the remedy you would suggest, having had this poor man's lawyer experience, to deal with this class of case that is likely to come before you?—As to the general jurisdiction, or dealing *in formâ pauperis* only?

13,987. No, what is the remedy of any kind that you suggest?—Speaking for the provinces, I think there should be provincial jurisdiction in the county courts.

13,988. You think that would be satisfactory?—I think that would be satisfactory.

13,989. Have you had other applications in what you term your local legal dispensary for *in formâ pauperis* cases?—Yes, I have about a dozen before me

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now which I took out of the rota of reports; notes of cases that are taken week by week.

13,990. And have they been taken up?—No, not one of them; I could not get any solicitor to take one up. I did not apply in all those cases; but in the cases where I did make inquiries to see if any solicitor would take them up they all said they could not do so.

13,991. You had already decided not to do so yourself?—After one experience I could not.

13,992. In your own district would the county court have time and opportunity to deal with these cases? Yours is Judge Austin's circuit?—Yes, he has already given evidence.

13,993. Yes, I had forgotten that. You make a point here about applications being heard by the judge, and by him alone. Would you tell us what that is directed to?—I regard applications for divorce as being so serious and important that I think the utmost attention should be paid to even the smallest points in practice.

13,994. So that they should be dealt with by the judge and not the registrar?—Yes.

13,995. You suggest that there should be leave to petition *in formâ pauperis* in the county court, and that that should be made to the judge?—That should be made to the judge.

13,996. With evidence as to separate means and income as to the petitioner only?—Yes, unless there is assistance.

13,997. "Unless any pecuniary assistance is being given by the respondent to the petitioner"?—Yes.

13,998. Might I suggest that would in many cases give the quite rich people the opportunity, because the wife might have no means and the husband be wealthy. Would not you exclude cases where the wife could obtain the usual order for security from a well-to-do husband?—Yes, I think that would certainly be useful.

13,999. You speak of assistance being given, or that it might be given by the order?—Yes, I was not thinking of the case you supposed of the wealthy husband not providing for his wife where an order could be made.

14,000. That you would except?—Yes.

14,001. Now what do you think would be the effect on the poorer classes, or on any of the classes, of giving these increased provincial facilities—that is the next point in your proof?—I cannot see myself that there can be any greater effect, either for good or evil, than is at present existing in London. If London is more immoral because of it, there is an argument for not increasing the facilities; but, as a matter of justice, I think it should be the same in the provinces. My own opinion is that increasing facilities for divorce would not increase immorality.

14,002. Would it decrease it or not?—That is so difficult a question that, as a young man, I do not feel at liberty to pronounce an opinion.

14,003. What is the general effect, do you think, of separation without divorce?—In my experience of social work amongst the poor and from what I have heard from others who have worked amongst the poor, I should think in a great many cases it does lead to cohabiting—the woman with another man, and the man with another woman.

14,004. Have you met with those cases yourself?—No, I have met with very few myself; I am speaking of what I hear from other people.

14,005. You say very few; have you met with any? Well, in the notes of cases that I have gone through, several times the woman comes asking for a separation order and says her husband is living with another woman. That is fairly frequent.

14,006. You have not investigated whether that is true or not?—No; time does not allow of carrying investigation further.

14,007. You confine yourself to giving advice chiefly. Do you go into the magistrate's court and see to separations?—We are bound to confine ourselves in Bristol purely to giving advice.

14,008. Have you any suggestion to make about separation orders?—I think the husband should have summary remedies in the way the wife has.

14,009–10. In your proof you make further suggestions about the wife having further powers?—Yes. There is a distinct difficulty, I think, in obtaining orders when the husband is neither cruel nor adulterous, but merely lazy. I believe that in the words of the Act, if he does not provide sustenance for her she is obliged to get a separation, but the difficulty is, the woman often does not like to leave the husband, and she works like a slave to keep him going, while he sits at home and does nothing. She does not like to go to the union and prove her inability to get support, and she goes on living sometimes on private charity, which is objectionable.

14,011. Well, how do you suggest to remedy it?—I think, on sufficient proof being given, she ought to be able to get a temporary separation order, even though she is still living with her husband, and without having to go to the union.

14,012. You say on several occasions you have had to advise wives to go to the workhouse because the husbands have refused to work?—Yes.

14,013. How are you going to make them work by getting the order. You can take the horse to the water, as the old saying says, but you cannot make him drink?—If he refuses to pay the maintenance he could be sent to prison.

14,014. This next point you tell us about—an accident happening to the husband. Does that illustrate any point you want to make?—That the husband should have a remedy in case of what I may call moral cruelty—a summary remedy. In that particular case there seems to be no remedy for him whatever.

14,015. You sum it up by thinking that the same remedy should be granted to the husband as to the wife, and a proper provision for the children?—Yes, that is so.

14,016. With regard to divorce cases and matrimonial cases being published—what is the view you take in Bristol about that?—This is purely my own personal opinion. I am in favour of their being limited to legal and medical journals only.

14,017. Will you give any grounds?—Because I think any deterrent caused by fear of publication is a wrong sort of deterrent, and I can see no good in the public knowing these cases. The questions of law or medical matters of importance are so few that the general public need not know them, and they need not be published at all.

14,018. You do not go into the question of legislation in divorce law at all?—No.

14,019. You state you have not had sufficient experience in divorce cases?—That is so.

14,020. But you do place men and women on the same footing?—Yes, I should certainly do that. I think people are ripe for that now.

14,021. (Sir George White.) You speak of having before you about a dozen cases in *formâ pauperis* at the present moment?—No, not that. I have before me cases where they might have applied in *formâ pauperis*. They have not applied for me to take them up, but they are cases where people have asked what it would cost.

14,022. I want to know whether they are recent cases, or whether they have accumulated over a length of time?—They range from 1906 to 1909.

14,023. May we take it that you consider the poor have a real grievance in consequence of their inability to get divorce because of the costs; is that your feeling?—That is my feeling; and not only as to those one usually describes as the poor; also as to the lower middle classes, where a man keeps up a position of respectability on a small income, and has no money to provide for extra expenses such as these.

14,024. (Sir William Anson.) Then I understand you would put men and women on the same footing as regards the grounds for divorce?—I should.

14,025. And you would bring the remedy within the reach of all classes?—I should.

14,026. By the employment of the county court?—Yes, that is my idea.

14,027. You have no views as to whether the grounds on which divorces might be obtained should be extended beyond adultery?—I have very strong personal views

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on those grounds, but I am not prepared to advocate them as general public policy. My own personal views are extremely strong, but I do not think human nature has been educated up to the standard where it would quite support such advanced ideas as were advocated by the last witness.

14,028. Are your personal views based on cases that have come before you, or are they the result of thought and reading apart from experience?—Not on cases that have come before me; simply on general ideas as to the ethics of morality generally. I do not think my own personal views would be of any particular interest.

14,029. I do not know that it is fair to press you —

(Chairman.) I think if he likes to state them there is no reason why we should not have them.

(The Witness.) I think I should agree very largely with the opinion of the last witness; that is my own personal view; but I am not prepared to agree with him that the time has now come when that should be put into actual practice.

14,030. (Sir William Anson.) Do you mean extending grounds of divorce as to cruelty —?—As to cruelty, no; but insanity, I think, should be a ground now; but the other grounds I would not advise at the present time.

14,031. (Chairman.) Why?—I doubt if a certain portion of the population is sufficiently educated not to take advantage of that ease. I am afraid there might be a great number of cases of collusion if the reasons for giving divorce were enlarged to that extent.

14,032. (Sir William Anson.) But you would as to insanity?—Yes, I would.

14,033. That is not always easy to obtain evidence of?—That is rather medical than legal evidence; I do not think it is very easy to obtain sometimes.

14,034. (Lord Guthrie.) We have been told in this matter that there is one law for the rich and another for the poor. This is not so, but it should be that the remedy for a well recognised wrong is open to the rich which is not open to the poor?—That is the better way of putting it.

14,034a. I understand you say in addition that there is a remedy through the *in forma pauperis* proceedings open in many cases to the London poor which is not open to the provincial poor?—Yes, owing to the expense of fares and other travelling expenses.

14,035. With regard to publication; do you find the provincial papers go over the score in your district as compared with London papers?—No, rather the other way; but, as you know, London papers are read so largely in the provinces, especially the cheaper ones, that it is not so important what the provincial papers do.

14,036. Are all the offices connected with the poor man's lawyer in England gratuitous?—All of them, I believe.

14,037. I was astonished to hear from the last witness that there are cases where some people connected with them seem to stir up inquiries. Has that come within your knowledge?—Certainly not; nothing of the sort has ever occurred in Bristol, I am absolutely certain.

14,038. (Sir Lewis Dibdin.) I understand you to say you have not personally come across many cases where separation orders have led to immorality?—I say that because, in attending on Thursday evenings at the dispensary the men or women come before me, but I do not follow their history. They may say the husband or the wife is living in adultery, but it is rather the pastor of the church or the warden of the settlement who knows the family history of the people.

14,039. Are those cases where the people have got separation orders already, or when they come to consult you about getting them?—The greater number of cases are where they have orders, and it is a question of getting maintenance out of the husband. But to an appreciable extent wives do come asking what they can do in cases of cruelty and desertion.

14,040. In those cases, where wives come and ask your advice because the husband has gone away, I think you said you had cases before you when incidentally she did complain of her husband living with another woman?—Yes, I have several cases here.

14,041. Those, I suppose, are comparatively common cases, are they not?—Yes.

14,042. Those are cases, not where the separation order has led to adultery, but where, if I may so, adultery has led to a separation order; I mean where the wrongdoing has gone before the separation order?—I should find it very difficult to establish the relations between cause and effect there, because it is usually touched on rather lightly by the person who comes, and I could not say as to the actual time the adultery commenced, whether it is before or after the separation order.

14,043. But the case you mentioned last, where the wife came, her husband having deserted her, and there being no separation order; I gather in a good many of those she mentions incidentally the husband is living with another woman?—Yes.

14,044. Those are cases where it would be impossible to say the separation order led to the adultery, because no separation order is granted?—Yes.

14,045. Therefore, it is rather the other way; the adultery comes first and the separation order after, if there is one?—Yes, I think that would be so.

14,046. I did not follow the suggested remedy about the lazy husband. We have had a good deal of evidence where the woman is not actively ill-treated, but the husband will do no work, and does not support her, and she is driven to great want, because he is so lazy. Your remedy is that she shall get a separation order?—A temporary separation order.

14,047. If she were earning her living, I suppose, what you would say would be that at any rate what she earns she will be able to spend on the maintenance of herself and her children, without supporting the lazy husband?—Yes.

14,048. And to that extent it would be a remedy?—Yes.

14,049. If she was not making anything, then the only remedy would be such coercion as is possible through the order by committing him for not obeying the order?—Yes. It would also work incidentally in this way, that you would find—(though I do not approve of private charity on principle)—you would find, in the case especially of charwomen, there are ladies who would not mind giving to the support of the wife and children, if they knew it would be directed solely to the wife and children, who will not give anything because they know if they provide anything for the wife the husband will do no work; so the wife would be in a better position apart from the ability to obtain work, from the point of view of private charity.

14,050. Your view is that the class of the public that you are conversant with in your work are not educated up to the level of larger grounds for divorce?—I think that is an enormously difficult question, and I am not prepared to advocate it at present.

14,051. You would grant divorce for incurable insanity, or insanity established to be incurable?—Yes, because, to my mind, such a person, as far as the wife is concerned, is not living.

14,052. Does not that view present great difficulties? What is really the difference between a case of incurable insanity and a case of hopeless paralysis? Would you allow divorce for that, where the man or the woman is a mere living corpse?—No, I should not, because hopeless insanity means actual physical separation, and paralysis might mean very often, if you allow divorce for that, that the paralytic would be absolutely helpless and homeless; and as to the question of "for better for worse" introduced this morning it seems to me that insanity is a degree further than "worse."

14,053. Why is it beyond the limits of "for better or for worse"?—Because the insane person is probably physically removed, not responsible for his actions, and under somebody else's control continually (we are now assuming it is permanent insanity) for the rest of his life.

14,054. Do you make it rest on this, that the paralytic cannot necessarily be in a public institution like an asylum?—I do not make the distinction that he cannot be, but that he is not bound to be. The permanently insane person is bound to be absolutely

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separated, and there is no possibility of any joint married life of any description.

14,055. Do you suggest that it makes any distinction that the paralytic person I have supposed is living in the house (to the extent that they are living at all), but is, perhaps, unconscious and is absolutely, as I say, a sort of living corpse; do you think that is a sufficient distinction between the case you are supposing—the case of incurable insanity, and that?—I do think it is sufficiently distinct.

14,056. (Mr. Brierley.) You live in Bristol, which is a seaport town. Do you get any great number of cases where wives complain of their husbands having left the country altogether?—Yes, we do get a fair number of those cases.

14,057. And stayed away a long time?—Yes; I have one or two cases before me now.

14,058. Have you formed any opinion as to whether you would grant a divorce in such a case?—Where the desertion lasted a considerable time, I am inclined to think that I should rather reduce the number of years necessary for the presumption of death.

14,059. There may be many cases where there is no particular reason to suppose the husband is dead, the probabilities being that he has deserted his wife to make new conjugal ties. There must be many cases where it is a mere fiction to presume he has died?—No, I do not think I should be prepared to advocate extension of divorce in cases of merely living beyond the seas.

14,060. Although he has put an end to the marriage as far as he is concerned?—Yes, although he has, I think I should require evidence of adultery.

14,061. Just this point you mention about the lazy husband who refuses to work for his wife. Is not the difficulty you point out really the same as many other witnesses have mentioned, namely, that it is a hardship that the wife should have to leave the husband

before she applies for an order?—Yes, I think that is so.

14,062. Is not that what it comes to? You see at present in the case of his wilful neglect to maintain her, which is the case you suppose, she has the right to a separation order if she leaves him?—Yes.

14,063. The condition precedent of leaving him is the hardship?—Yes.

14,064. Is not that really what your observation amounts to?—Yes.

14,065. (Chairman.) Just one word. Did I understand you to say that you are in favour theoretically of increasing the grounds of divorce, but that the country was not yet ripe for it?—Yes, that is my view.

14,066. Have you considered the Scottish question, where they have had for two or three centuries desertion for four years and upwards as a ground for divorce?—No, I have not given much consideration to that.

14,067. Did you know that?—I do not think I was even aware of that.

14,068. Do you think the educational standard of the country in England is less or greater than in Scotland?—Speaking as a loyal Englishman, I should say not less; but I know very little of Scotland myself.

14,069. We are told that in Scotland they have had four years' desertion as a cause for divorce for the last two or three centuries, and that that has not been productive of any difficulties with regard to collusion and so on. Would that at all affect your view as to the probability of its being worked on the same lines from the point of view of jurisdiction?—Unfortunately I should have to put with that the impression I have received of life in Scotch cities. It is purely the impression I have received from people who have lived there; that the conditions are far more immoral than in most English cities. Whether there is any connection between the two I do not know at all.

(Chairman.) I must thank you on behalf of the Commissioners for your evidence.

Mr. JOSEPH SYKES called and examined.

14,070. (Chairman.) You are a solicitor, I think, of how many years standing?—20 years.

14,071. Do you appear on behalf of the National Legal Aid Society, No. 1, Great James Street, Bedford Row, W.C.?—Yes.

14,072. What is the function you exercise in connection with that society?—I attend there one or two hours a day, and I advise any poor people who come there free, and I take up cases on their behalf, and of course some people can pay a little, and they do pay, and I make a little remuneration out of it.

14,073. Your operations in connection with your society, I suppose, are somewhat similar to what we have had from the last two witnesses in connection with theirs?—Yes.

14,074. A poor man's legal aid?—Yes.

14,075. You have sent us a proof of your views, which are, I suppose, the result of your experience. Will you tell us first about local courts?—Dealing with London and the home counties, I think the present Court is quite sufficient to deal with the matter—as at present constituted.

14,076. How do you find that work out with regard to the cost of cases?—Well, I have had a great many cases—probably between 200 or 300 in the last 10 years or so, and I find it is a good remuneration in certain undefended cases, at from 15*l.* to 20*l.*, and *in formâ pauperis* cases 10*l.*

14,077. Those are cases where you have your witnesses in London?—Yes, and also where the witnesses are in the country, but they pay their own railway fare up to London.

14,078. Does that 15*l.* to 20*l.* include counsels' fees and out-of-pockets?—Oh, everything.

14,079. Does it leave anything for you?—Yes.

14,080. Because it seems to be considerably less than what Mr. Musgrave, the Registrar of the Court, gave as the result of taxation?—Well, you will see in Mr. Oakley's book there is a little scale of costs there that is allowed *in formâ pauperis*.

14,081. But will you keep first to those that are not *in formâ pauperis*?—Well, we do them cheaply, and there are people who cannot afford to pay a great amount, but they could probably afford to pay from 15*l.* to 25*l.* and they do, and most of the cases, if they are carefully worked up, can all be done with one witness. You will find in the cases—and I have a number of briefs here—in every case the respondent and co-respondent are living together. You have not to seek these isolated acts of adultery, which is very expensive work.

14,082. Are those all cases in which the proof is capable of being carried through with one witness besides the petitioner?—Yes, most of them—and probably some better.

14,083. Very simple cases?—Yes.

14,084. And those cases you can get through in London for from 15*l.* to 25*l.*?—Yes.

14,085. That is a good deal less than Mr. Musgrave said?—I do not think he could be dealing with these cases, and he does not know them. I have had such an experience now in these poor people's cases that I can prove them very readily. An ordinary solicitor would begin looking round about if he had not had the experience I have had, and would probably get up twice as much evidence as is necessary.

14,086. Does your experience extend to the country?—Yes, I have briefs here from Newcastle and Wales, and everywhere, where the charge has been the same—20*l.* to 25*l.*—and the people have paid their own railway fares.

14,087. Then all that there has been extra has been the railway fare?—Yes.

14,088. Who have they employed in the country?—No one.

14,089. Communicated direct with you?—Exactly. We often find a man will come up by some excursion from Newcastle, perhaps it has been run for a football match, and he will come and explain, and we will tell him what evidence is wanted, and then we can do it by correspondence as a rule.

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14,090. Is that cost at the ordinary rate of charge that you would put down in a taxed bill, or something you would mention yourself?—It is an estimate which gives good profit. Of course, in some cases there is not so much profit as others, but dealing with poor people it would be absurd to deliver full bills for every letter you write and every attendance; it would be impossible.

14,091. That is the cost you can do it at without the accustomed charge?—Yes, I make a contract price in fact.

14,092. Would that explain Mr. Musgrave giving a bigger figure?—Yes, but I think in those bills mentioned by Mr. Musgrave, if they are looked at there would be a lot of interlocutory proceedings. Probably the case would go on and not be finally defended in the court, but you would probably find in those cases they had been defended to a certain extent.

14,093. With regard to defended cases in London, have you had any of those?—Yes.

14,094. What do they run to?—Well, that is difficult to tell; they may run to anything. I acted for the respondent in a case I have mentioned in my proof, and I think in that case the costs came to 50*l.* up to setting down, and 120*l.* for the hearing. But you cannot regulate a defended case.

14,095. There you get the husband paying the costs of both sides, more or less?—That is so.

14,096. And you get the delay in London while the case is going on?—When it is a defended case you do.

14,097. Is your view that it would be an advantage or not to have tribunals in the provinces?—Well, I think some people cannot pay their fare; no doubt that is so; that would be a detriment to them. But when they are thrifty, and in good employment, I do not think 2*l.* or 3*l.* extra railway fare would make much difference.

14,098. They would be obliged to employ a solicitor in London to do it?—Oh, I think so; undoubtedly.

14,099. You were going to say something about *in formâ pauperis* cases?—Yes, I say 10*l.* allows a profit. There are no court fees to pay, and there is the 10*l.* for preparing your proof and briefing counsel, and I have received great assistance from counsel in most cases.

14,100. They have no fees?—Oh, yes.

14,101. But you have carried through cases *in formâ pauperis* in London?—Yes.

14,102. London cases?—Yes.

14,103. What have you been able to get them through for?—10*l.* It is a sort of fee I have put on—10*l.*

14,104. What does the counsel have in those cases?—The counsel has had 2*l.* 4*s.* 6*d.* and sometimes 1*l.* 3*s.* 6*d.*, and the rest has been my own for getting up the case and so on.

14,105. And the witnesses expenses have been nothing much?—Well, not very much, they are working people and —

14,106. Have you had any *in formâ pauperis* cases from the country?—I do not think I have. I have had them just from the home counties as far as Watford and Aylesbury.

14,107. You are rather treating that as home counties in your proof?—Yes.

14,108. Would you tell us why it is with regard to the poorer classes that you find the proof can be very easily carried through in many cases?—Because the respondent and co-respondent are invariably found living together. They are not in a position to afford two establishments and they go and live together as man and wife openly in some neighbourhood, and there you find them.

14,109. Are all the cases you have got in your proof of that character?—Nearly all of them. I have not read them all through since they came back from counsel, but I can safely say they are.

14,110. Have you any in which the costs can be put before us where they have not been found living together?—I could easily get one; I have not got one in my mind. I could, no doubt, find one!

14,111. You could find us one or two bills of that kind?—I could not on the moment, because all these are undefended cases where no bills have been made out. It would be hopeless to make out your bill and tax it against a co-respondent who was a workman. You get awarded costs, but I have never taken up the order for the costs.

14,112. Have you any bills that have been taxed?—I have no taxed bills here at all.

14,113. But at your office?—I think I could find some.

14,114. Can you send us any?—Yes, I will try. But with these poor people I have not had their bills taxed; I never tax them. (App. X., p. 71.)

14,115. You could find some to show us what costs are made in a taxed bill?—Yes, I could do that. In Mr. Oakley's book as to *in formâ pauperis* you will find there is a scale mentioned by him to be used in *formâ pauperis* cases. I have not that book here at the moment.

14,116. We can easily get that?—Yes.

14,117. Then so far as London and the home counties are concerned, centralisation in the present divorce court is sufficient, you think?—Yes, I think so.

14,118. Are those cases that you proceed to refer to cases that are in that list you have got there. You mention some names?—Yes.

14,119. Those are the names included in the summary you have given me just now?—Yes; there are some others, too, here, I think.

14,120. But I want to know whether these were reported cases?—No, they are not. There is one reported case.

14,121. With regard to the country; what should you suggest about the country in cases where facilities are desired?—Well, I think if people do not come to town they might go to the assizes.

14,122. You suggest here that where there is a local court of record such as the Liverpool Court of Passages or the Salford Hundred Court, they would do?—Yes, I think a court of that description might very well deal with it—but only in those localities, of course.

14,123. With regard to separation orders, would you tell us what the result of your experience is with regard to that?—I have a great many people come to ask advice over it, but they are mostly women who have been deserted; they have their separation order and the husband has gone away and you cannot find him. In every case I have said, "Why do not you 'apply for a warrant?' and she says, "Oh, that is no 'good'; he has been in prison once or twice, and he 'only laughs at me, and says he is going away.'"

14,124. What becomes of these men?—Some go to Canada or some of the colonies, and some go to the north of England. A labourer can always make his living wherever he goes.

14,125. Is this a frequent case?—Oh, very frequent.

14,126. What do you suggest is to be done?—I do not know what to suggest. You cannot keep a man at home; if he means to leave his wife he will go.

14,127. It has been suggested that desertion of that kind should be a ground for divorce?—I think so. If the desertion is likely to be permanent it should be left to the discretion of the judge deciding the matter; it should be a ground for divorce.

14,128. You deal with that further on in your proof, but what I did want to get clear is this. Is this case of 'desertion' one that frequently happens, or is it only occasionally?—Very frequent; that is my experience.

14,129. As to the publication of reports, what do you say about that?—Well, I think the press ought to exercise their discretion, and I think as I have said in my proof, some of the Sunday papers put in unnecessary details, which I do not think are advisable.

14,130. And if that discretion is not satisfactorily exercised, what is your remedy?—Well, I do not know what remedy there could be; there might be such a thing as contempt of court.

14,131. Or an entire suppression of reports?—Yes, but I do not think I should agree with an entire

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suppression of the report. I think the fact of the report is part of the punishment to the people and is a deterrent.

14,132. Do you think it good for the world at large to read the details?—No, not the details

14,133. With regard to the fourth question, I think that is a question of extension of grounds?—Yes.

14,134. Will you give us the result of your experience with regard to that. I have already asked you partly?—Well, on the ground of desertion where it is likely to be permanent, I think it should be a ground for divorce; but the whole of the circumstances of the case should be taken into consideration—considering the previous history of the parties, and how they lived together and the family.

14,135. You say, "At present there is absolutely no redress for women who are in the position of very many who consult me at the society's office." Is that on the question of desertion?—That is on the question of desertion and insanity.

14,136. You have an illustration here as to a Frenchman?—Yes, that was a very difficult case. There was a young girl, and she married a Frenchman who was over here for the purpose of learning the English language and business methods—like a good many come; and they got married, and he promised to send for her when he got back to Paris, but when he got back he wrote and said she was not his wife, and that his parents forbade him to have anything to do with her.

14,137. That is a case of conflict between English and French law?—Yes; and that he did not mean to come back and that she should not go to France. I think she should have a decree of nullity in a case like that.

14,138. You think if it is so held in France it should be so held here?—Yes, I think so. Then I had a case a few days after. The German Consul sent a German woman who had married an Englishman and the Englishman had deserted her and left her in London four or five years ago; then she had been living as a servant at a lodging house, and she met a German who wished to marry her. I said she could not marry him here; what she could do in Germany I did not know. She said she was not married according to the German law; but she had married an Englishman, and I take it had become a naturalised Englishwoman.

14,139. If she married an Englishman she became an English woman?—Yes, and she said she wished to marry this German.

14,140. I am afraid that nothing but uniformity between the countries can get rid of some of these difficulties?—No.

14,141. I think you have here some letters from various parties who are in a similar position?—Yes.

14,142. Is that as to the international difficulty?—Oh, no, not all of them; one or two of them are cases of desertion and insanity.

14,143. I do not care about any individual case except in illustration of a point. Perhaps you can state the point?—Well, in one or two of these letters the deserting party has gone to America and is now living in adultery there and has no intention of coming back. She would be able to get a divorce if we could get the evidence of adultery; but that would be in America on commission, and then there is the question of identification which would make it prohibitive.

14,144. Do you think in those cases proof of desertion alone should be enough?—Yes, if the judge is satisfied that it is permanent.

14,145. Those letters illustrate that point. Then what is the point they illustrate about lunacy?—Well, a young girl married a man; they had a child; they lived together one or two years. Then he became violent and assaulted her; she returned home, but eventually went back to him; he became worse than ever, and then was taken to a lunatic asylum, where he has been for three or four years, and they certify he is not likely to come out again.

14,146. Is that a case where the young woman is seeking to obtain relief if she can?—Yes.

14,147. Asking your advice on it?—Yes, and she says she thinks she could marry again.

14,148. Have you had more than one case of lunacy?—No, not of lunacy.

14,149. The next point is one that I am not sure that I appreciate, about the financial position of the husband?—I am really referring to the case of *Ashcroft v. Ashcroft and Roberts*. That is a case your Lordship adjudicated upon some years ago. I acted for the respondent. There were no counter-charges against the husband. The jury found that the respondent had been guilty of adultery, and your Lordship suspended the decree till the husband entered into a deed to allow her 1*l.* a week. You considered she was not able to be turned off on to the world; she had no parents alive and no relatives to whom she could go. The point of that is that she received 1*l.* a week for some years, and then ultimately got married, whereas if she had not had that 1*l.* a week she would have had to go to the workhouse at once.

14,150. Well, that is a matter that there is power with regard to now?—Yes, but I should like to see it exercised—

14,151. It can be exercised in every case where the court thinks proper?—Yes, that is for the court.

14,152. Then you suggest that the court should have power to order alimony there and then without referring the matter into chambers?—Yes, I think the court has the power, but I have not known it exercised.

14,153. The last point in your proof I do not quite follow. It is a question about security for costs?—Yes.

14,154. If you will suggest any remedy there?—I have a case here. This was a petition of the husband, and the respondent and co-respondent were living together as man and wife at the time. The papers were duly served on the parties. It was a case *in formâ pauperis* I should first state; he was a gardener earning 1*l.* or 2*s.* a week, and the proceedings were commenced, and at the very last moment the wife—just before the hearing—applied to defend, and it was adjourned for the purpose of allowing her to file an answer. She filed an answer alleging cruelty against the husband, and then took out a petition for alimony against the husband. Then she taxed her costs in the usual way against her husband, and they were taxed at 17*l.* 1*9s.* 2*d.*, which the husband was unable to find. Consequently he had to drop the proceedings. Now if that woman had been compelled to proceed *in formâ pauperis* the same as her husband was doing, there would be no order for costs against him, and the matter could have been proceeded with and come to trial. I attended the taxation. Mr. Inderwick was the registrar, and I pointed out that the husband proceeding *in formâ pauperis* surely they could not expect him to find the wife with these means, and he said that was the rule of the court.

14,155. Do you mean when the husband is proceeding *in formâ pauperis*, and the wife sets up her answer, she should not be allowed to proceed for her costs at all, or only for *in formâ pauperis* costs?—Yes.

14,156. The latter?—Yes.

14,157. And not the full costs?—Yes, that is so.

14,158. (*Mr. Brierley.*) Your experience with regard to the costs in undefended cases seems very different from a great number of witnesses we have had from various parts of the country. I should like to know what is the reason. Do you take up these cases as solicitor on behalf of the National Legal Aid Society?—Yes.

14,159. Do you take up *any* cases, or cases that you think could be carried through for a small cost?—I consider the case before as to whether I shall take it up or not.

14,160. Then if a case offers any prospect of being other than an extremely simple case you do not take it up?—Oh, no.

14,161. I mean we have had solicitors from many parts who say they quote a higher sum than you mention?—I do not think they have had anything to do with poor peoples' divorce like I have—where people live together, and they are working people. They talk about employing their agents, and the agents require

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30 guineas. They are not dealing with the class of people I am dealing with in my proof. These cases are all cases pretty well proved with one witness who is a working man of the same class.

14,162. Supposing the case should require more than one witness, do you then take it up?—Oh, certainly.

14,163. Because, though I quite understand that a great number of these cases may be as you say where the parties are living together, there must be also a number where that is not so?—No, not amongst the working classes. They cannot afford to keep two establishments.

14,164. But there may be such a thing as casual adultery or adultery with a lodger?—Well, as soon as that is discovered by the labourer he throws his wife out and she has to go somewhere, and then she bolts with the lodger or goes with the paramour she has been carrying on with before.

14,165. Do you include in those cases you have mentioned the usual profit of the solicitor, or do you take it at a lower price in your capacity as solicitor under this National Legal Aid Society?—I do not send in a full bill. I make a price which is cheaper.

14,166. Is that owing to your position as solicitor to this society?—Exactly.

14,167. Would an ordinary practising solicitor be able (not actuated by any philanthropic motives) to undertake a case at the cost you have mentioned?—Certainly he would if he had been mixed up in it as much as I have and knew what to do.

14,168. I mean assuming him not to be interested?—I do not go off to counsel directly; and I draw my own petition.

14,169. Well, of course it is very much lower?—Yes; well, I do it for people and it can be done by anybody.

14,170. (*Sir Lewis Dibdin.*) I gather you have had a quite unusual amount of experience in divorce cases for the poor?—Yes, I have.

14,171. And the result of your experience is that you think those cases can be taken up and carried through by a solicitor if he has enough experience to know the ropes, as it were?—Yes, certainly, and especially with the assistance of the counsel, and the court are always willing to help poor persons.

14,172. I see, although the bulk of your cases are from the home counties, you say you have had a good many cases from much further afield?—Certainly.

14,173. Have you had cases from as far north as Newcastle and Yorkshire?—Yes. I have had a petition in Japan and adultery proved in Canada.

14,174. (*Mr. Brierley.*) That was not done for 20l., was it?—25l. It was all done by affidavit.

14,175. (*Chairman.*) How did you get the Canada case through for 25l.?—Well, we called one witness from Yorkshire who went and saw the respondent and co-respondent going away to Canada. We got an affidavit from a man living in the same house in Canada as they were, and he had known them before at Pudsey in Yorkshire, and then there were certain letters which the woman wrote home to her relatives in which she admitted that she lived with that man.

14,176. What did that case cost?—25l.

14,177. What is the name of it?—*Logan v. Logan* and *Stockwell*. (*Handing the brief.*)

14,178. (*Sir Lewis Dibdin.*) Without going as far afield as Canada, you have had a good many cases from the north of England and other parts remote from London?—Yes, there is one from Leeds here.

14,179. And is your evidence as to the cost of those cases the same as that you have given—as to amount?—Yes, exactly, providing they pay their own railway fares and their witnesses' railway fares.

14,180. In your view the amount of extra costs in country cases is the railway expenses?—That is so, yes.

14,181. And I suppose if they were met by any form of relief, either public or private charity, that difficulty would be removed?—I think it would with this exception. Of course in a country case people go to consult the local solicitor there, who sends up the case to his London solicitor, and that means more expense.

There must be the London solicitor as well as country solicitor, and that doubles the expense.

14,182. How do you mean doubles expense; because the agency charges are not in addition to the costs of the country solicitor, are they?—Oh, it makes a great addition to the bill.

14,183. In the way of correspondence?—Yes.

14,184. I thought letters between the agent and the country solicitor could not be charged for?—Well, it is not my experience. I practised as a young man in Liverpool, and I know the agents' bills used to swallow up the whole of our costs.

14,185. But in fact, if there is a country solicitor as well as a London one, it does cost more?—Certainly.

14,186. Then we have heard a good deal about another point, and that is the loss of time; that working people cannot afford to lose time to come to London; and the loss of time would be much less if there was a local court. Is not that a substantial matter?—Well, it is a substantial matter, but I am speaking solely of undefended cases now, and there are certain days assigned for them, and they are taken on that day, and from Newcastle or Wales the people come by the midnight train, and they are generally on their way back after 4 o'clock in the afternoon—if they wish; some make a little holiday of it, and walk round for a day or two.

14,187. In the case of a defended case, is not the loss of time of having to come to London very serious?—Well, it is. You cannot gauge that either—the cost or the time that will be taken in a defended case.

14,188. Now you have had defended cases from the country?—Yes.

14,189. Do you take them up as readily as the others?—Well, I have my own private practice too.

14,190. But I mean you do not refuse such cases?—No, not where I consider there is really a good defence—substantial to put forward.

14,191. Have you practically found the difficulty of the loss of time and travelling expenses very serious in those defended cases?—Well, it is a thing that I have not heard any direct complaints about, but sometimes people have come up and the case has practically gone over the week-end, and they have had to come up again.

14,192. Have you known cases that have broken down because the people could not afford the loss of time, I mean?—No, I have not.

14,193. I think you told us that you could furnish us with the expense of such a case where the co-respondent and the respondent were not living together and where therefore more witnesses were necessary. Not necessarily where there is a fixed bill, but you could give us an illustration of what the expense has actually been of such a case, could you not?—That would be rather difficult. The only case I have had is where the costs have been sent us when they have been taxed; or I could get it from the country bills delivered to the country solicitor including the agent.

14,194. But I rather wanted to get cases that you did by your contract, without a bill, which were defended, rather than these undefended cases?—No, that is impossible.

14,195. Now you have come across a good many cases where the trouble has been a foreigner marrying an English person contrary to the law of his own domicile, and then deserting her?—Yes.

14,196. We have all felt the trouble of those cases, but does it strike you that any remedy is possible there except something in the nature of an international law of nullity declaring such a marriage null in England as much as null in France or Germany?—Well, I think our courts should have the power themselves to use a discretion in such a matter.

14,197. Of declaring the marriage null?—Yes, after a certain time, and I say the same thing applies to desertion. It is the same in principle.

14,198. It strikes me as a different problem from desertion. It is rather a case of nullity of marriage than for dissolution of marriage, is it not?—Yes, it is.

14,199. It is a case, is it not, where the original contract is not really a mutual contract?—It is mutual so far as the willingness of the parties is concerned.

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14,200. But I mean, taking the case of a Frenchman, the husband is not bound, but the wife is bound?—Yes.

14,201. Does not that rather suggest the remedy for that is making it a null marriage from the beginning and saying that there was no such mutuality as would make it a binding marriage, rather than a divorce in the real sense?—I do not think I should make it from the beginning. In cases where there might be children that would be rather hard, to decree a nullity from the beginning if there were children born subsequently but before the desertion took place.

14,202. But it is more like a case of nullity than divorce?—Certainly, I quite agree.

14,203. You have spoken about the advantage there would be if the alimony were decreed when the divorce was pronounced then and there by the judge. I am very ignorant in divorce practice, and perhaps the question I am going to ask is not a sensible one, but is alimony ever decreed in any of these undefended cases that you speak of?—No, we never ask for it.

14,204. It could be?—It could be asked for.

14,205. Why do not you ever ask for it?—It would never be obtained, and it would be a big expense to make the application.

14,206. When you say it would never be obtained, do you mean the judge would not give it?—No.

14,207. But if he did give it on paper it would not be recovered?—That is so.

14,208. You mean the latter?—I mean the latter.

14,209. Would not that difficulty emerge always in the case of divorce of very poor people?—I do not think in the case of divorce of very poor people if a decree of alimony were made that it would ever be paid, but there are cases where they are not absolutely poor. A person who can pay 25*l.* I do not consider absolutely poor.

14,210. But taking the case of a poor person, your view is that practically you could not recover alimony from a working man or a poor person, who had been divorced?—No.

14,211. As a matter of business you regard it not worth pursuing?—Not worth pursuing. It would mean a great waste of time and extra fees and judgment summonses, and you would never get any satisfaction. The man flits from one address to another.

14,212. I want to ask you about the kind of case that has been put here a great deal, where a woman has been deserted by her husband and is left with a lot of children, and perhaps she has a separation order or perhaps she has not. It is said that in that case it is a hard case that she should not get a divorce, because if she could get a divorce her financial position somehow or other would be better. In your view, as far as alimony is concerned, so far as any support by her late husband is concerned, her position would not be any better than it was before?—No.

14,213. Therefore the chance of amelioration of her condition would depend on her being able to find another and a solvent husband?—That is so.

14,213a. (Lord Guthrie.) You conduct cases in the Divorce Court for your own private practice or as agent for the Legal Aid Society?—Yes.

14,214. Are any of the bills of costs that you have before you in your private practice, or are they all in connection with the society?—No, any bills that I have have been in connection with my private practice.

14,215. Only?—Yes, I do not make out bills in these cases.

(Chairman.) You want to know about these cases.

(Lord Guthrie.) Yes, these are all in his private practice.

(Chairman.) No, I understand not.

(The Witness.) No, these are legal aid cases.

14,216. (Lord Guthrie.) That is what I want to know—the bills of costs you have before you?—No, these are briefs. They contain the facts of each case shortly.

14,217. Are the briefs you have before you all in connection with the Legal Aid Society?—Yes, all these briefs here.

14,218. Do you make a contract for a lump sum both in your private practice and in connection with the society?—In my private practice, if the people were in a better position I should send in a bill in the usual way.

14,219. In your private practice do you ever make a contract for a lump sum?—I never have.

14,220. But in connection with the society you do?—Yes. People say: Now how much will it cost; we cannot pay more than that; will you do it for so much; and I meet them.

14,221. And you take your risk?—And I take my risk.

14,222. In connection with the society, have you fought any defended cases?—Yes.

14,223. Can you give any idea how many?—I should think about six.

14,224. And how many undefended cases?—Undefended, I should think between 200 and 300.

14,225. Suppose a case is apparently to be undefended, and then ultimately the respondent appears and puts in a defence; in that case does the case go on where you have contracted for a certain sum?—If undefended. I always make that stipulation, because the respondent comes in, perhaps, and gets an order for 20*l.* or 30*l.* against him, and I explain that before the people go into it.

14,226. Have you had cases where people have told you they cannot afford the sum you have mentioned to them as a minimum?—Yes, I have.

14,227. Many of them?—Well, they say they cannot, and after a few months they come back and say: "I have been able to get that"; they go round to their friends.

14,228. And in some cases they do not come back?—They do not.

14,229. These are cases where, on account of their poverty, they are denied a remedy?—I suppose that is so.

14,230. Is that all in London, or have you found that with provincial cases?—I have not had much to do with provincial cases.

14,231. Then you are not in a position to say whether in the provinces there are not a substantial number of cases where people, on account of want of means, are denied the remedy at the present time?—That I cannot say.

14,232. You were asked about the deterrent question, and you said, naturally, that you think the reports in the paper are a deterrent?—I think so; they do not like it; they say: "Do you think this will get in the papers?" and so on.

14,233. Now, is not the deterrent this: getting into the papers and their names appearing, whether there are details or not?—Well, I mean it is partly the punishment of the crime.

14,234. But have not you found this (I used to when I was a counsel at the bar), that what people are anxious about is this, that they want to keep it out of the papers?—Absolutely.

14,235. If their name goes into the paper, and the fact that they have been guilty of adultery is going to appear, the mere length of the report does not affect them much?—I should not think so.

14,236. They want to keep it out of the papers altogether?—Undoubtedly; you have sums of money offered you to try and get it done frequently.

14,237. I quite understand that. Supposing there were a system of providing for the poor by assigning to them counsel and agent as a matter of right, do you think it would be reasonable that that should only be done after some preliminary inquiry to see that they have a *prima facie* case?—Oh, certainly; there should be a strict enquiry into such cases.

14,238. (Mr. Burt.) When you speak of carrying through cases at a cost of 10*l.* you are referring to London entirely?—And to *in forma pauperis* cases.

14,239. And to London exclusively?—If I got the evidence I could do it from any part of the country, if they paid their railway fares, at the same prices.

14,240. And they were undefended cases I presume?—Only undefended I am referring to. I am dealing solely with those.

14,241. Have you had many cases in distant parts of the country?—Yes.

14,242. You spoke of 25*l.* as the cost of some of those cases?—Yes.

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14,243. And I understood you to say that in those cases the railway fares were paid?—Exclusive of railway fares, yes.

14,244. And of course there would be no allowance in the case of working people for the loss of time?—No; they come up together, and the witnesses are generally friends and relatives of the parties concerned in the case and they take a day's holiday and come up together.

14,245. In the case of having to leave their employment, unless they did so by consent of their employer, would not there be some risk of dismissal?—Well, of course that is always a matter of arrangement. Working men and mechanics work so much an hour and they generally take a day off when they want it, I think.

14,246. And in these cases there is not much expense from legal advice I suppose?—How do you mean?

14,247. Well, I suppose to a large extent in these cases you are giving your services free or at a very slight cost?—Yes, I may say I advise many people nearly every day when I go to the society's office freely—without anything.

14,248. Apart from that the cost would be largely increased?—Well, if we made out a full bill they would be. As I say, I have had such an experience in these particular workmen's cases that I find no difficulty in dealing with them at a fair remuneration for myself at the price I have named.

14,249. From 15*l.* to 25*l.*?—Yes.

14,250. (Sir William Anson.) I want to be quite clear about the costs, Mr. Sykes. It would be 15*l.* to 20*l.* for a case from any part of the country?—Yes, provided the people will pay their railway fares, and so on.

14,251. Yes, that does not include the expense of the railway fares of the witnesses?—No.

14,252. Who might want to be paid something if they gave up a day's work?—That is so.

14,253. In cases of proceedings *in forma pauperis* it would be 10*l.*?—Yes.

14,254. Is counsel assigned in cases *in forma pauperis*?—No, neither solicitor nor counsel is assigned in the Divorce Division. As I say, I have had great assistance from members of the bar. I take them a case and say: "Will you take this?" and they say, "Certainly."

14,255. As a matter of fact you generally get it done?—Oh, yes, by the gentlemen in the court.

14,256. What the advantage is in proceeding *in forma pauperis* is the relief from court fees?—Yes.

14,257. And you probably get the assistance of counsel without a fee?—Oh, no; we always give them a fee, 1*l.* 3*s.* 6*d.* or 2*l.* 4*s.* 6*d.*

14,258. A small fee?—Yes.

14,259. But the cheapness in preparing arises from the fact that the case is undefended?—Yes, absolutely.

14,260. And that the evidence of the adultery is usually simple?—Yes.

14,261. The cohabitation of the respondent and the co-respondent is undoubted?—Yes.

14,262. And also from the fact that a particular day is fixed?—Yes. A particular day is fixed for the undefended cases.

14,263. So that those are elements in the cheapness?—Absolutely.

14,264. Under those circumstances you think that the existing Divorce Court or the assizes or a local court would suffice?—Yes, I think so.

14,265. And would not cause hardship to the poor?—In reference to the county courts the fees in the county courts are almost as much as in the High Court. I mean it costs you 2*l.* hearing fee in the county court on the B scale, and it costs only 2*l.* to set down a cause on assize.

14,266. The difference then would be the cost of travelling?—Yes.

14,267. And the witnesses' expenses?—Yes.

14,268. At any rate you see no reason for extending the jurisdiction of the county courts?—Well, I have

not practised in the country so much, and I really do not know.

14,269. But you would, nevertheless, extend the grounds of divorce to desertion?—Oh, I think so, yes.

14,270. That would at once raise questions of evidence which would not be so easily decided, would it not?—Well, no doubt it would. You would require extra evidence.

14,271. The case of the Frenchman is a question of altering the law of domicile, is it not, rather than dealing with a case of desertion?—Oh, no, I do not think so.

14,272. You would not wish the marriage to be declared null from the outset?—I would leave that to the discretion of the court. If there were children it would not be right to.

14,273. If the marriage were not legal to start with, the children would not be legitimate?—Well, it is legal.

14,274. You would rather make it a case of desertion than a question of nullity?—Yes, I think I should call it desertion.

14,275. Then insanity, would you make that a ground?—Certainly I should.

14,276. Permanent?—Where it is permanent, and certified to be permanent to the satisfaction of the court. I should certainly give discretion.

14,277. Would you go further, make cruelty a ground for divorce?—Persistent cruelty I think should be. I mean when it is impossible for the people to live together.

14,278. And drunkenness?—Well, where it is habitual, as it has been described. I did not know it had that meaning before the learned chairman said so.

14,279. If you introduce all those grounds you introduce a much larger field of evidence. I mean, if a party came up from Newcastle, he, instead of simply proving adultery, which is not contested, would have to prove cruelty to the satisfaction of the court, or habitual drunkenness?—Well, the more one had to prove the more the evidence required. The same witness might be able to prove adultery and gross cruelty.

14,280. But if you alter the law of divorce, as you think it ought to be altered?—I would rather leave it to older persons.

14,281. If you alter the law of divorce as you would have it altered, the proceedings would not be so expensive as they are now?—These particular cases which I have dealt with would. It could not make any difference to them.

14,282. Not if you had to prove habitual cruelty or habitual drunkenness?—That is a case different from those I have dealt with. I have dealt with the law as it is now.

14,283. But the proceedings would not be as cheap?—Of course, if you require more witnesses it would not be so cheap.

14,284. Under those circumstances the existing court would hardly suffice, would it?—Well, it is a question of means.

14,285. If you are to make divorce as accessible to the poor?—I am not saying do not have divorce in the country; I say I think the courts in London are sufficient for London and the home counties. Beyond that my experience is not sufficient.

14,286. When once you get beyond London and the home counties, and the present law as it exists, you are not satisfied that the greater facilities in the way of jurisdiction?—I think probably they should be given, as I suggest, to the various assizes; of course, county courts are well able to deal with them, but my experience of county courts is that they are very busy indeed.

14,287. You would prefer the assizes?—Yes.

14,288. Or a local court of record, such as the Liverpool Court of Passage, or the Salford Hundred Court?—Yes, if there is such a court.

14,289. (Sir George White.) When you were asked as to the expense and so on, you said sometimes costs were saved by communicating direct with you and not employing local solicitors?—Yes.

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14,290. How are they to know of your existence in distant places?—Well, some people tell of us, and the society for many years has had an advertisement in the paper.

14,291. Then you do really advertise the advantages which you offer?—Well, that is so. I do not advertise that, but—

14,292. Then in advertising those advantages you practically make a special price in these cases?—One has to. A working man comes and says: "What am I to pay?" and you cannot say, "I cannot tell you"; he wants to know. If I quote a price I stand or fall by it myself and carry it through.

14,293. Then there is another question which I do not think has been distinctly before the Commission. If those identical cases had been dealt with by you as a private solicitor apart from the society, would you still say they could be carried through for 20*l.* to 25*l.*?—Certainly they could be. I should not have the people coming in the same way, but if they came, with the experience I have I should take them.

14,294. As a private solicitor you would take them from 15*l.* to 25*l.*?—Yes.

14,295. Would you say that would be so with other solicitors?—Yes, but I do not know that other solicitors have touched on poor people's divorces; they are all people in better circumstances.

14,296. Then in order to place these advantages within range of particular people they must know of your existence?—Well, I do not know.

14,297. That is really what it comes to?—Well, these are the facts, and these are the briefs, and those are the prices.

14,298. If you say as a private solicitor you could carry those identical cases through apart from your connection with the society for the same price, that is what I wanted to get?—Yes, but I should not like to do it in an isolated case here and there; but the cases are here.

14,299. Then in defended cases you say they may cost anything, as we have had before?—Yes.

14,300. From that we infer, I suppose, that working classes and persons of moderate means have very little chance of getting defended cases through because of costs?—That is so.

14,301. Then I ask this in ignorance of the circumstances: is it necessary that these cases dealt with by the county court should be placed in the scale B or C?—No, I do not say necessarily place them on it; but the price comes out much about the same, 20*l.* or 25*l.*

14,302. If placed on that scale?—Yes.

14,303. But probably they might be placed on that scale?—And probably not. I only suggest if they were, and I think it is probable they would be, the same as the Workmen's Compensation Act.

14,304. Ordinary business people are in the habit of looking on the county court as a cheaper method of dealing with such cases as the county court can deal with, than going to the assize court?—Exactly.

14,305. That would act in the case of divorce, would it not?—That might be, but I simply said scale B and C, because they come to the prices about of these cases I have, and having regard to the Workmen's Compensation Act cases they come out about the same.

14,306. Then as to county courts being overcrowded, that is a matter of detail?—Yes.

14,307. It is not a question of principle?—No.

14,308. Which could be overcome?—Yes, I think if the registrars were given facilities for trying cases up to 10*l.* or 20*l.* it would relieve the judges.

14,309. You would not think that an insuperable objection?—No; it could be arranged on a day set apart.

14,310. Then as to reports of cases. Did I gather that you consider the newspaper report a deterrent against committal of the offence or a deterrent against applying for divorce?—No, I say it is generally a punishment to the people. I do not say it is a deterrent, but it is a punishment.

14,311. To those who have committed adultery and therefore may deter others?—Yes.

14,312. Then the whole of your evidence goes to show that the costs which you give us have to be added

to by the expenses of witnesses and the parties themselves who are interested in the case?—Yes.

14,313. It is suggested that this difficulty might be removed by public or private charity meeting the fares; is that very likely?—I hardly think you will find that, unless there is some bureau opened. I do not think you will find private people giving money for that purpose.

14,314. Then it does still remain an addition to be added to the cost of country cases?—Yes.

14,315. And therefore puts country cases in a worse position than the same class of case in London?—Yes.

14,316. And may we take it that all undefended cases put down to be taken on a certain day are taken on that day?—That is my experience.

14,317. So that, as you say in your proof, people can get to London from a distance, and get back the same evening?—That is so.

14,318. Does the court extend its sitting in the case of one or two being prolonged?—I have known the court sit later, but as a rule they finish before time.

14,319. Then they make a list which they know they will probably get through?—Yes, or if counsel had a case with witnesses from a distance the judge would probably hear it.

14,320. (*Chairman.*) What is the National Legal Aid Society, and who formed it?—It is a society formed some 20 years ago by a number of gentlemen.

14,321. How many members have you?—About six—gentlemen who are somewhat interested.

14,322. Does it have some funds?—Well, we have not any funds really. At one time there were a number of subscribers, but it was found not to work. People subscribed and then wished all sorts of actions brought on account of being subscribers.

14,323. Are the six gentlemen solicitors?—Oh, no.

14,324. What are they?—The secretary is a private inquiry agent also. There is another retired gentleman who spends a great deal of time there, and there is another gentleman who is connected with the Society for the Prevention of Cruelty to Children who gives us his support, and one or two others.

14,325. Have they any funds which help these poor cases?—Well, I can always ask for one or two pounds if I want it to pay expenses with.

14,326. Why I asked was, that it seemed you drew a distinction between your private practice and the cases in which you have briefs in front of you?—No; the only thing is, I should not have these working people coming to me in my private practice.

14,327. And when they come you make them a sort of price?—Well, they tell me what the cases are. It is generally put before the secretary of the society first, and he tells me what it is, and I look at it and consider it.

14,328. Have you a bill of costs or any bill which shows what was paid for this case of *Logan v. Logan*?—I could tell exactly what we did pay, I think; actual out-of-pocket expenses?

14,329. Yes?—Yes, I think so.

14,330. Could you send me that?—Yes, with pleasure. (*App. X., p. 71.*)

14,331. This is one you have handed in as a sample?—Yes.

14,332. In that case there are two affidavits and one witness and a letter?—Yes.

14,333. That I can quite understand might be extremely cheaply conducted. That, I think, cost 25*l.*?—Yes.

14,334. That is the type of a case which might be done for this 15*l.* or 25*l.* limit?—Yes.

14,335. You see there are a lot of cases which doctors come into?—Yes.

14,336. In the country if a case could be taken there the doctor is close to, and his fee and expense and time would be very different from what it would be if he had to come to London?—Yes.

14,337. Have any of these cases included a doctor?—No. I had one decree of nullity on the ground of the incompetence of the husband, and that cost 40*l.* As you are aware, with regard to the doctors' fees, they

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are entitled to 10 guineas each on the examination and 10 guineas for coming to the court, that is 30 guineas.

14,338. But if you have to prove a wound from cruelty or a case of desertion, if they come from the country they come at great inconvenience and considerable cost?—Yes, but I have not considered that, and that does not come into that.

14,339. But a court in the country would have to deal with that kind of case?—Yes.

14,340. And there are other classes of cases that are very expensive?—Yes.

14,341. The cases you have mentioned are cases of a very simple order where two people are living together?—Yes.

14,342. Could you send me the actual out-of-pocket expenses in this case of *Logan v. Logan*?—Yes. (App X., p. 71.)

14,343. And you mentioned you had had six cases defended. Can you send us the actual cost in regard to those six cases?—I will try and look them up. It is some time ago.

14,344. You see it is quite easy to follow up the simple case at a price named, and taken on a definite day, as you say it can be got through quickly and cheaply, but once you get difficulties of expensive witnesses and contested cases, you meet another position altogether?—Absolutely. That is what I have said all along. I am simply dealing with undefended cases. (Chairman.) Thank you very much for your evidence.

Adjourned for a short time.

Mr. HERBERT GREENWOOD WRIGLEY called and examined.

14,345. (Chairman.) I think you are a solicitor in the city of Manchester?—I am.

14,346. You are the honorary secretary of the Poor Man's Lawyer for Manchester and Salford?—Yes.

14,347. And particularly of the Poor Man's Lawyer Department of the Manchester Art Museum and University Settlement?—I am.

14,348. Has your position as such brought you into contact with the artisan as well as the poorest classes in Manchester?—It has.

14,349. Was your department, "founded 10 years ago for the purposes of advising the poor as to their respective rights and liabilities, and is now conducted under regulations approved by the Manchester Incorporated Law Association"?—It is.

14,350. Have you had to consider during that period many questions between husband and wife, and also a number of bastardy matters?—Yes; we estimate 1,500 matrimonial matters, 795 of which have been dealt with during the past two and a half years.

14,351. And also 112 bastardy matters during the last 19 months?—Yes.

14,352. You have had to "investigate the 750 most recent cases with a view of discovering if any injustice had been done owing to the present state of the law"?—That is so.

14,353. I see, according to your proof of the number investigated, 190 attended?—Yes. There are 70 matters marked "Exhibits D1 to 70" (App. XI. (A), p. 74) and then 90 matrimonial and 30 bastardy matters.

14,354. "Of the investigated matters in which the applicant failed to attend, I perused and considered from the records of the department 338"?—Yes.

14,355. Forty-two bastardy and 245 general matrimonial, and in 51 cases there was a note suggesting dissolution?—Yes.

14,356. "In the remaining 222 cases there was not a sufficient note to be of any use as evidence"?—That is so.

14,357. "The bastardy matters were examined with intent to discover if they showed that separation of husband and wife had been responsible for the illicit intercourse. In none of these matters was this discovered"?—That is so.

14,358. "The only result of the investigation tends to show how easily young girls were led astray, and in the opinion of some of the solicitors investigating the cases, and in my opinion, in most cases the girl had wilfully allowed intercourse to take place in the hope that if anything should happen the man might be forced to marry her"?—Yes, that is so.

14,359. That is prior to marriage?—Yes.

14,360. Have you formed any opinion from your experience and the number of cases you have examined as to whether or not there is any demand in Manchester for divorce, if they could get it?—I think there is a decided demand amongst the poorer classes, and it is absolutely impossible for them to get it.

14,361. On the question of dissolution and validity your department investigated 70 matters?—Yes.

14,362. "I perused and considered the records of 51 matters not specially investigated. Of the matters perused and considered, 24 were applications by the wives and 27 by the husbands"?—That is so.

14,363. "Four related to the question of the validity of the marriage; in five cases the wife had not seen her husband for several years, and in 15 cases a divorce was desired"?—Yes.

14,364. Different grounds in the different cases?—Yes.

14,365. "Of the husbands' applications 23 desired divorce; three had not heard of their wives for several years"?—Yes.

14,366. And one consulted the department as to the validity of his marriage?—That is so.

14,367. Have you put in a book by itself the 70 cases you have investigated?—Yes.

14,368. D1 to 70?—Yes.

14,369. We can look through it at our leisure afterwards, but could you pick out a typical case or two—just one or two, to show us the sort of thing and the sort of demand you have referred to. Before that, I might ask you this: "Of the 70 matters specially investigated under this head and comprised in the Exhibits D1 to D70, 43 were applications by the wives and 27 by the husbands"?—That is so, my Lord.

14,370. And of the wives, 29 desired a divorce, and of the 27 where the husband consulted the department, there was a necessity for divorce in each case?—Yes.

14,371. I want you to give us a typical case or two, both of the husband and wife?—Now there is a case, D2. This is a case where the wife had left for Canada under the Salvation Army scheme. What is known about her is that she is dressing expensively and living extravagantly, and an army officer is said to be responsible for this. "Inquiry, if made, would no doubt reveal grounds for divorce; wife refuses to return." There is one child of the marriage. The applicant earns 26s. a week, and has no means of procuring a divorce. The man is a tram conductor. Now, even if he were to get a free divorce, he could not bring his witnesses to London. He could not prove his case.

14,372. Would your view be that if there were a court sitting in Manchester he could do so?—I think he could.

14,373. Would you take another. We can look through these for ourselves, but we will just get on the notes one or two?—The next case, D3, is a case where the wife got more out of somebody else than out of her husband, so she leaves him and lives with the other man. He could pay a small sum for divorce.

14,374. Would you just read the note?—D3. "Applicant not called on to support his wife because she can get more out of the other man. Could pay a small sum for divorce, but expense of taking witnesses to London would be too great."

14,375. What was that man's wages?—37s. a week, and he is a fitter.

14,376. May we take those two as samples of the kind of thing you have there?—I think those two are rather good.

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14,377. (*Lord Guthrie.*) What do you mean by a small sum—5*l.*?—Well, that man might possibly raise altogether 6*l.* or 7*l.*

14,378. (*Mr. Brierley.*) Might I ask, has he any children?—It does not appear so. You see they were married when they were 19 years of age.

14,379. (*Chairman.*) The woman has been living for the last five months at an address given with some other man?—That is so.

14,380. I do not want to go through all these; they speak for themselves, do they not?—Yes, they speak for themselves.

14,381. Those were two cases by the husbands; have you got the wives' cases?—Yes.

14,382. (*Lord Guthrie.*) Might he explain with regard to "D4." They were married in a Roman Catholic church, and you say she would avail herself of the opportunity for divorce; how is that if she is a Roman Catholic?—Well, she desired divorce; that is all we know. I was surprised, but still she desired a divorce.

14,383. (*Chairman.*) That is a wife's case?—Yes.

14,384. "Husband deserted her December 26th, 1908, leaving her with one child eight years. No proceedings taken. Cannot definitely state if living with anyone else, but believes so. Wages not exceed 10*s.* per week. Would avail herself of opportunity for divorce, but is penniless. Unless same absolutely free, would be unable to avail herself of same." We need not go through all these?—Oh, no, my Lord. There is one matter I would mention "D14." The husband is a fitter and is living apart from his wife, and they were married 12 years ago, and age when married was 18. The "husband had two children by another woman after deserting applicant. Only lived five weeks together. One child of marriage," and the "applicant is a weaver. Could not afford a divorce. Might be able to raise 10*l.* to 15*l.*" Weavers get better wages. She might be able to raise 10*l.* to 15*l.* for a divorce.

14,385. Now you have here "70"?—Yes.

14,386. I see the first is the 20th November 1909. Are they all in 1909?—The dates at the head of the note are the dates when they were specially investigated for the purpose of this Commission.

14,387. I want to know over what period it existed?—November 13th, 15th, 22nd, up to the 6th December.

14,388. It is only November and part of December?—Yes.

14,389. And you have 70 cases there?—They are matters that have been before the department before on previous occasions. For instance, this man was before the department on the 1st June 1908. I wrote to 750 of those we had dealt with during the last 2½ years, and out of the 750 I asked to come and tell the tale again, 190 appeared.

14,390. One hundred and ninety appeared?—Yes. The 160 which appear in these exhibits, and the 30 you have the original exhibits for in bastardy which do not really affect it.

14,391. What is this volume marked "M1 to 90" (App. XI. (B), p. 83)?—It is general matrimonial matters, not divorce.

14,392. Separations?—Separations and that class.

14,393. Well, we can look at these at our leisure; but what is the conclusion that you draw from the whole of these materials, which seem to be very extensive?—Well, we submit that the centralization of matters in London—

14,394. That is what you are going to submit as a remedy?—Yes.

14,395. But what is the conclusion you draw as a fact. I am looking now at the fourth paragraph of your proof?—"In each of these cases there is no doubt that an injustice had been done by reason of the expense of obtaining a divorce; and in many of the cases, even if the divorce had been free, the cost of proceedings in London and the necessity of bringing witnesses there amount to a denial of their right." I specially refer to certain matters there. "In two of the cases, namely, D8 and D24, the injustice is all the more apparent when it is discovered that the husband has to leave his children in the custody of his adulterous wife, because in the

"present state of the law he cannot obtain an order for the custody of his children unless he moves for a divorce, or takes the costly legal processes provided in such cases."

14,396. Perhaps it would be convenient to look at one of those. Take "D8." That is a labourer?—Yes, that is a labourer, and they were married at 29 and 23, respectively; married in 1906; and they appear before us in 1908.

14,397. "Date of marriage 1906, December. Age when married, 29; wife 23. Place where married, Registry Office. Nature of relief required, divorce or separation with custody of children"?—Yes, he did not specially desire a divorce, but he wanted the custody of the children.

14,398. "Deserted by wife who is living with another man. Cannot afford the luxury of divorce or separation; hence, cannot obtain custody of his child"?—That is so.

(*Lord Guthrie.*) Why cannot he obtain the custody of his child?

(*Chairman.*) He might apply for a separation order or divorce.

(*Mr. Brierley.*) He has no power to apply for a separation order—not for adultery or desertion—under the Act of 1895.

(*Chairman.*) He would have to come to the High Court and get an order for custody.

(*Mr. Brierley.*) Yes.

14,399. (*Chairman.*) Then turn to 24?—This man is a ring doubler, and they were married at the ages of 22 and 21 respectively. Then they required either a separation order or a divorce with the custody of the child, five years old. Wife is living in adultery. Applicant could spare a small sum for a divorce, but owing to his financial position his child has to be left with his wife, who is living in adultery. Of course, these are very serious matters for the man and for the child.

14,400. The point is, that the husband has no remedy whatever?—The husband has no remedy whatever.

14,401. Except in the High Court?—Except in the High Court.

14,402. He cannot go there and so his child goes on living with his wife who is living in adultery?—Yes, of course you may say he has a right to the custody of his child, but he cannot afford *habeas corpus* or anything of that kind.

14,403. I do not think that has been presented to us before. Then of other matters: "D23, D54, and D57 could find a sum up to 20*l.*; one, viz., D16 could find 15*l.*; two, viz., D1 and D63 could find 10*l.* to 15*l.*; and three, viz., D27, D31, and D53 could find 10*l.*"?—Yes.

14,404. Does your experience lead you to say that in all of those cases they cannot get a remedy?—They cannot in any of those cases get a remedy, and I have made a note in the margin of my proof that 18 out of the 27 husbands are unable to find any money; and of the wives 22 out of 29. Of course the wife's position is much worse than the husband's, because they cannot earn as much as a man, and when once they have been married they cannot perhaps earn what they could before.

14,405. Your note goes on to deal with these wives' applications?—Yes.

14,406. And after referring to several of the cases you say, "In all these cases the expense of proceeding to London prevents any steps being taken by the wife"?—Yes.

14,407. "There are only two cases, viz., D14 and D15, in which the wife could find from 10*l.* to 15*l.* There are three cases, viz., D20, D41, and D47, in which it is possible she might be able to raise from 5*l.* to 10*l.* And in the remaining 22 cases it would be practically impossible." So you sum it up, "out of 51 who might have been entitled to a divorce, 40 are not in a position to pay more than a very small sum"?—Yes.

14,408. Now do you think you have exhausted Manchester in these cases, or are there other cases?—I do not think we have by any means exhausted Manchester. There are five departments in Man-

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chester. We are the largest, but there are four other departments which must have certain matrimonial matters, but they have taken ours as a typical department, and did not desire to be represented.

14,409. Then you only represent one department in Manchester?—I represent this department specially, because we have investigated matters; the other departments have not investigated any, but they quite agree with the general conclusions.

14,410. Your typical cases are only those you have investigated in your own department?—Yes.

14,411. There are other departments that would have cases if they did investigate it?—That is so.

14,412. Then the summary I may put to you is that you are satisfied that there is really serious demand for this remedy in the local district?—That is my feeling.

14,413. And this book shows it?—Yes.

14,414. Now I proceed with the proof, because we can study that for ourselves. In December 1909, did you discuss this question of divorce with a representative body of working men in the Ardwick Men's Club?—Yes.

14,415. Is that club conducted on wholly non-political and unsectarian lines by a body of English citizens?—Yes.

14,416. What is the result?—The feeling of the meeting was, that if you created a cheap divorce, unless you coupled with it the punishment of the guilty parties, it would lead to a great deal of immorality. "The men were strongly opposed to giving jurisdiction to the county courts in matters of divorce, as they felt that the granting of a divorce was as important to them as to a rich man, and was not a matter of small moment such as are relegated to the jurisdiction of the county courts."

14,417. Then what is the remedy that was suggested?—The remedy suggested is either trial at the assizes under a special scale or having local divorce assizes.

14,418. And I see that you represent that the cases should not be countenanced unless they are recommended by a body wholly disinterested?—Excuse me, my Lord. I think this would be scarcely feasible. It ought to be "previously investigated by an official."

14,419. Have you followed out the Scotch system?—No, I have not.

14,420. There is a process there by which the cases are submitted to a committee before they get on the Poors' Roll?—Yes.

14,421. That is the sort of thing?—Yes. I thought of having an official attached to the registry, to whom the matters would be referred. When an application was made for a cheap or, perhaps, a free divorce, the matter would be referred to this official to inquire and report, and then if the official were satisfied that injustice would be done by reason of this man being poor and that he had a case, then I should suggest that the matter be referred to a solicitor on a rota, like we refer from our Poor Man's Lawyer any matter which we cannot deal with at the settlement.

14,422. That is very much the Scotch system. Now, I see you state your department and the classes and other sections of the community, as far as you can judge, think there should be punishment?—Yes.

14,423. What punishment?—Imprisonment of the guilty parties. If you do not provide for that you will have an immense amount of collusion.

14,424. Would that be so if you had an official to investigate the cases?—That might be minimised—undoubtedly it would be minimised.

14,425. If they were satisfied?—Yes; but then, on the other hand, you protect a man's property or a woman's property; why should not you protect him or her in the enjoyment of a wife or husband. If a man steals your goods, you punish him. Why should not you punish him if he steals your wife?

14,426. You see, that requires the consent of the wife?—Quite so.

14,427. I think I am correct in saying punishment was recommended, as far back as the Reformatio Legum, by Cranmer and has never been carried into force in England, though I think it has in some

countries?—It was also recommended when the Matrimonial Causes Act was before the Lords.

14,428. Yes; but it was not accepted?—No.

14,429. You think without that there might be a danger of collusion?—I think there certainly might be a danger of collusion.

14,430. Which would in some way have to be safeguarded against?—Yes.

14,431. But why do you say earlier that without punishment you think there would be immorality?—Well, the working man fears that if you are going to give cheap divorce, if the wife wants to get rid of him she will commit adultery—she will allow somebody to commit adultery with her.

14,432. That would be a bar to her claim, as the law stands?—Yes, my Lord; but a woman would not commit adultery with a man if she thought she was to be punished for it.

14,433. You mean she would commit it so as to give him a case against her?—Yes, that is so. There is no doubt there is an immense amount of collusion at the present time.

14,434. The basis then of this idea of this immorality is the collusion?—Collusion principally.

14,435. If that were adequately inquired into, would that get rid of the difficulty?—It would to a degree.

14,436. Was there any general view expressed at your meeting that the husband and wife should be on the same footing with regard to adultery?—Yes; they thought the husband and wife should be on the same footing.

14,437. With regard to the next part of your proof, cases have been mentioned, I understand, in which the husband or wife have not been heard of for some time, and upon that you make a comment?—Yes. "Separation is the cause of a great amount of immorality, especially in certain cases where the parties are married at the early age of 16 to 20, and the husband leaves after a very short period. The department feels that there should be some system whereby the husband who has not communicated with his wife, or a wife with her husband for a number of years, should be able to obtain a decree of the court declaring the defaulting spouse to be dead so far as the marriage is concerned. This should, of course, not be given until very careful inquiries have been made, and a marriage after such decree should be valid even though the husband return. It is felt that it is a great hardship for a woman when she honestly believes her husband to be dead and after a period of (say) seven years enters into another marriage and perhaps has children of this marriage that, although she may not be prosecuted for bigamy, the marriage should be void and the issue illegitimate."

14,438. Would not that be met by making desertion a ground for divorce?—That would be so.

14,439. Would the people you discussed this with be in favour of the Scottish system with regard to four years' malicious desertion?—Though we do not actually say so, I think it amounts to that really.

14,440. With regard to your scheme for dealing with divorce cases, I will come to that in a later part of your proof. Then with regard to separation and other general matrimonial matters, you have examined 90 cases, which are in these exhibits, 1 to 90?—Yes.

14,441. Seventy-four are applications by wives and 16 by husbands?—Yes.

14,442. In addition you have "examined the records in 245 matters. Of these, 204 were applications by the wives and 41 by the husbands." I see by your summary the number of wives which desire separation on the ground of desertion is 112; "28 on the ground of failure to supply sufficient maintenance; 25 on the grounds of cruelty and desertion; and six on the ground of threats"; that is 171 desired separation?—Yes.

14,443. Of 33 there was no sufficient note. "Of the husbands' applications three were for separations from their wives by reason of their being habitual drunkards, and in 38 matters the applicant had

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"consulted the department as to payments under orders or generally as to the conduct of their wives." I think in the rest of the note you summarise what we shall find in these exhibits Nos. 1 to 90?—Yes.

14,444. But what is the point which you wish to make with regard to that class of case?—"It is the department's experience and my own personal experience also that an immense amount of trouble is caused by a man being forced to marry a woman in order to escape bastardy proceedings. It will be noted in the matter M1 that a child was born two days after the marriage when the husband and wife were aged respectively 21 and 22." This man is a labourer and the child was born two days after they were married.

14,445. But is your point that there ought to be legitimation after marriage?—No, my Lord; what I want to draw attention to is that well-meaning people endeavour to persuade these people to get married in order to prevent illegitimate children being born.

14,446. But how does that help us on this Commission?—I am afraid that scarcely touches it.

14,447. It does if you are prepared to recommend, as representing a general opinion, that the marriage should legitimate the children?—No, I would not recommend that—not on this head.

14,448. Then that part hardly helps us?—No.

14,449. (*Sir George White.*) Does it not mean that marriages forced under the circumstances lead almost immediately to separations after?—That is the conclusion I draw from that.

(*Chairman.*) Would that help us to a recommendation.

(*Sir George White.*) I do not know, but I want to get at the reason why he put it in.

14,450. (*Chairman.*) Do you find as a matter of experience in investigating all these cases that separation does lead to immorality?—Not altogether. A temporary separation is a good thing.

14,451. Yes, I mean permanent?—In a permanent separation they do not come to us again of course.

14,452. Do you think in that case they form other ties?—I think so; there is very little doubt about that—if they are young.

14,453. Would your people be in favour of the magistrates, if that jurisdiction remains, making a temporary order in the first place?—Yes, we suggest an order for, say, 12 months.

14,454. Then how would you deal with the matter after that, assuming they had not come together again?—I think we might almost presume adultery in many of these cases; we might presume it.

14,455. Would you then suggest at the end of the time the matter should be brought up?—Yes, they must be brought up again before the Court to see if anything can be done to bring them together. We find in several of these cases they have come before us again and they are living together. Then there is one matter where the husband is living in adultery by reason of his wife refusing to have intercourse. I do not know whether—

14,456. Would you treat that as a ground of desertion?—I think so.

14,457. Now there is another point which is interesting about an injustice being done by reason of the lay magistrates hearing the cases?—Yes.

14,458. What is the point there?—Well, this woman had been married for 25 years and she applies for a separation order. A certain lay magistrate hears this matter—it is M40—and says it is a pity they should be separated after living 25 years together. She could not afford a solicitor, and therefore no order was made.

14,459. Your note is that she said she could not go back to her husband?—Yes, she said she dare not; she had stood him for 25 years and she was not going to stand him any longer, so she lost all her remedies.

14,460. Now what is the remedy you suggest for that; is it that the stipendiary magistrate should hear the cases?—I say that these matters should be taken from the lay magistrates altogether.

14,461. Have you yourself appeared in the police court?—I do not appear in the police court myself, but the solicitors who attend the department do.

There are several who appear in the police courts, and they tell me of these matters, and they say they do not consider the lay magistrates at all satisfactory in dealing with these cases.

14,462. I see you have some further observations in your proof upon this. Perhaps you will read it. It is on the top of the next page?—Yes. In this matter of M44, she left her husband in 1904; she is a machinist now; he agreed to make her an allowance and only paid her 2s. She has already summoned the husband but, not being represented, could not obtain an order.

14,463. (*Mr. Brierley.*) When did she take out her summons?—I have not a note of that.

14,464. That is the most important part. Whether tried before lay or stipendiary magistrate she may have been out of time?—Yes.

14,465. (*Chairman.*) Why do you say that shows the necessity of being represented by a lawyer?—Well, we find these magistrates, when the people come, say, Oh, it is a pity for you to be separated from your husband; just try him again, and so on; and there are certain magistrates who absolutely refuse separation orders on personal grounds; they do not take the legal view of the matter.

14,466. Then your objection is on the grounds you have mentioned to lay magistrates dealing with these matters at all?—That is so. Of course, there are lay magistrates who do take a very sensible view of these matters, but I do not know whether we altogether find them on the city benches.

14,467. You say here: "The husbands were men of power both in stature and language, and consequently talked their wives down and the summonses were dismissed"?—In some cases, yes.

14,468. Then as to 87; you draw attention to that?—I only do that to show the ideas of these people. I put this note here: "This note is inserted as an example of the crude ideas of morality. Applicant told me that one day her husband brought another man, and told her that this man would look after her for the future, and that he was going. Applicant says that this man has been very kind to her, and also to all the children, and that she could not wish for a better husband." That is what it amounts to in a lot of these cases; they form another alliance and live together.

14,469. That only shows the low standard of morality?—Yes.

14,470. It does not deal with the matter itself?—No, there is nothing easier than for them to go and live in a street not very far away, and say they are married, and live as husband and wife.

14,471. With regard to this point about the magistrates you seem to suggest in your proof "That no cases in which the complainant is not represented by a solicitor should be dismissed until it has been adjourned for (say) a fortnight to enable the magistrates to have inquiries made into the circumstances by some voluntary organisation." Is that based upon hasty dismissal of cases?—Yes. Of course, that would not occur if the stipendiaries dealt with these matters.

14,472. The next point is that you would make orders of payment payable by being served on the employers?—Yes; of course some say it would be a hardship on the man, but still if he will not pay why should we consider him.

14,473. You also say that power to pay through an officer of the court is not much used?—No.

14,474. Why is that?—I do not know.

14,475. You suggest here it is because they are not represented?—I think so; I think it is because they do not understand.

14,476. Then the next point is about the position of a man. He has no remedy except under the Habitual Drunkards Act. Have you any suggestion to make about that?—Well, we suggest in the conclusions—

14,477. I will come to your recommendation shortly, but I want to take you through your proof?—Well, in this case we suggest that where the wife neglects her home and family and drinks, although she is not an habitual drunkard, and pawns the husband's

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goods, that the husband ought to be entitled to a separation to protect himself. If he has not that he has to desert her. That is done in order that she may obtain an order against him.

14,478. It compels her to get an order against him, and then he pays her so much?—Yes, and then there is an end of it. They would be quite willing to allow the wife something and get rid of her in such circumstances.

14,479. Then you would allow the husband to apply in certain cases to compel her to separate?—Yes.

14,480. He paying her so much?—Yes.

14,481. Instead of paying it the other way round?—Yes.

14,482. I note further in your proof the early ages at which they marry?—Yes.

14,483. But that does not help us?—No.

14,484. Then there is a matter that is important as to marriage in places of worship?—Yes.

14,485. I see, "The department fears that they have not appreciated the solemnity of the service, nor has the ceremony appealed to them any more than as a mere form with which it was necessary to comply to render the marriage legal; and it might be considered a little more respectable than going to a registry office"?—Yes.

14,486. What is the remedy you suggest?—Well, I think the civil marriage in most cases would be much better; why go through the mockery of a religious ceremony when nobody takes any notice of it? I have no desire to debar those who prefer a religious ceremony from participating in one, but I think the Church service is too solemn to be used for the careless and indifferent.

14,487. Do you say they attach less importance to it in that case than they do before a registrar?—I am afraid they attach very little importance to either.

14,488. Then how are they to be driven to attach that importance to it which they should?—I think that the registrar or whoever performs the ceremony ought to explain to them more fully the step they are taking and the legal consequences.

14,489. Would you require that there should be a distinct ascertainment of the consent of the parents?—In the case of people under 21 I think it would be very desirable. There is one thing that we notice—the difficulty of discovering the witnesses to these ceremonies at the registries. Very often the two go to the registry to be married and they do not take anybody with them. Somebody is called in who is passing at the time, and signs the register as witness; you cannot find those people; you do not know where they are; and if proceedings for bigamy have to be commenced at a future date the difficulty is in proving the marriage; you cannot prove it.

14,490. Is your suggestion that they should be required —?—I think they should not be allowed to bring unknown people out of the streets; either the clerks in the registry or someone should witness—some known person.

14,491. Then the next point you deal with is reports of cases. I should like to hear what you have to say about that?—Well, we think that further than just the bare facts of the case, or such a report as the court might allow, should not be permitted, and it should be contempt of court to publish the details which are published to-day.

14,492. This is a conclusion I gather after a consultation with the Lancashire College Settlement Department?—Oh, yes, that is another point. They suggested to me that if we prevent the publication of these reports a provision should be made for allowing the public to inspect the proceedings on payment of a fee, but I do not know whether I can recommend that.

14,493. However, are you and the college both against the publication of reports?—We are.

14,494. Would you summarise your proof by saying the only satisfactory remedy for the deplorable state of affairs that obtains is to create a more moral atmosphere?—Yes.

14,495. "If this were done there would be little necessity for divorce"?—There would.

14,496. Now, you have also sent me a summary of your conclusions?—Yes.

14,497. If you will just read that it can go on the note?—First, on "Dissolution and validity of marriage." (1) That the centralization of all matters in London amounts to a deprivation of the right of the artisan and poorer classes to have their serious matrimonial matters adjusted by a competent court, and as a result inflicts great hardship upon such classes. (2) That in remedying this injustice great care should be taken that any proposed legislation should not do anything to destroy or in any way impair the sanctity of the marriage vow, and therefore it is undesirable to render divorce too readily obtainable.

14,498. I want to concentrate that. What is the remedy you suggest for centralization. What court do you suggest?—My suggestion is grouping of centres.

14,499. Grouping courts at centres?—Grouping courts at centres. Of course, London takes a certain district. Then the next large district is Birmingham. Birmingham might be a very good centre. North of that you have, going west, Manchester and Liverpool; and to the east, Leeds. If it was necessary you might have a trial in Newcastle, but I do not know whether it would be desirable to have a fixed court at these places.

14,500. What court do you suggest?—I think a branch of the divorce courts, a judge of first instance. I do not like the idea of a county court judge trying these matters.

14,501. However worked out, your point would be a special judge, taking cases at different centres?—Yes.

14,502. Or a certain number of special judges?—A certain number of special judges, according to the necessity.

14,503. Then No. 3?—"That all suits for dissolution or validity of marriage should be instituted in the district in which the petitioner resides or such other district as the court may direct, having taken into consideration the convenience of the parties to the suit; and if such district be in the provinces then the trial should take place at the assizes held in that district."

14,504. You have rather modified that?—Well, I mean by that the special divorce assize.

14,505. Then No. 4?—"That unless provision is made for assisting poor applicants financially the injustice which they suffer cannot be removed. This would be done (a) by abolishing court fees in these matters; and (b) by appointing counsel or solicitor who would be paid wholly or in part by the State. This provision may be abused and to prevent such abuse a scheme should be adopted which would provide for a strict preliminary investigation by an official. Such scheme has been considered, and will be laid before the Commission if so desired."

14,506. Have you got it written out?—I have not written it out, my Lord.

14,507. Will you just state it shortly?—Yes, shortly I should suggest an official at the district registry who will have matters referred to him for inquiry and report; he will inquire into the matter not only as to the *prima facie* case, but also as to the means of the parties, and whether there is any chance of collusion; what sort of life the party has led who is endeavouring to obtain this relief. Then he should report to the court that the applicant has a *prima facie* case—that he is earning so much and would be able to pay a certain sum.

14,508. Taking it that it is an honest case?—Yes, certainly. It would be the official's province to see that this provision is not abused by these people. Then I would have a scale of charges—a reduced scale of charges—for these cases, a scale recoverable by the solicitor, and I would have a rota of solicitors who will accept these matters from the district registry at this scale, and the next man on that rota would get the next case. That rota would be prepared by a local

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law society, and you would keep undesirables off that rota.

14,509. Then to that scheme would you apply this abolition of the court fees and the appointment of counsel or solicitor?—That is so.

14,510. That is all applicable to cases where they are too poor to do it themselves?—Yes.

14,511. You are not proposing to interfere with the others?—No, but we say it would be desirable for them to try in the district instead of in London.

14,512. That would be similar to Scotland?—Yes.

14,513. Then No. 5?—“That a man who commits adultery with a married woman, knowing her to be a married woman, or a woman who permits a man to commit adultery with her, knowing him to be a married man, is guilty of an offence against the State and all the parties to such offence should be punished by imprisonment according to the gravity of the offence committed. By such punishment the State would (a) impress upon the public mind the binding nature of the marriage status; (b) prevent collusive suits; (c) minimise the necessity for divorce proceedings.”

14,514. Then No. 6?—“That a woman should be able to obtain a divorce for adultery simply without proving cruelty or desertion. 7. That the present system of suits *in forma pauperis* should be abolished and that a scheme should be provided in lieu thereof which would enable the parties to be properly represented without injustice being done to the legal profession.”

14,515. That you have already elaborated?—Yes.

14,516. No. 8?—“That the court may grant a decree declaring a man or woman dead so far as the marriage is concerned in case (1) he or she has not been heard of for five years; (2) he or she is proved to the satisfaction of the court to be suffering from incurable insanity; (3) he or she being an habitual criminal has been sentenced to penal servitude for a period of seven years, or having been sentenced to death, such sentence is commuted to penal servitude for at least seven years; and in the first case in the event of a marriage after such decree such marriage should be valid even though the defaulting spouse should return.”

14,517. (*The Earl of Derby.*) Why do you confine it to the first?—Well, it only applies to the first case because incurable insanity —

14,518. (*Chairman.*) You mean they have been known to exist there and it would have to be made in face of that knowledge?—Yes.

(*The Earl of Derby.*) If a man is dead for one reason he is dead for the other.

14,519. (*Chairman.*) You really mean, as Lord Derby says, in all those three cases the decree should be absolutely binding?—Oh, yes, absolutely binding, but in the first case you make a decree which is not a fact, you see you do not —

(*The Earl of Derby.*) I could not see your difference.

14,520. (*Chairman.*) No. 9?—“It should be declared to be contempt of court to publish the evidence given in a divorce suit other than such report as may be authorised by the court.”

14,521. Then your last matters deal with separations and general?—Yes.

14,522. You had better read that; perhaps it is the shortest way?—“1. Proceedings under the Married Women's (Summary Jurisdiction) Act, 1895, should be removed from the jurisdiction of the lay magistrates because (a) by reason of their lack of legal training it is difficult for them to take a detached view of the matters on their merits, and they consequently allow prejudice for or against a course of action to warp their judgment; (b) they are practically compelled to rely on their clerk in questions of law and the interpretation of rules of evidence. All such cases should be taken by stipendiary magistrates or by county court judges or other authorised persons, being barristers of at least seven years' standing. 2. A husband should be entitled to a separation order and consequent relief not only when his wife is an habitual drunkard but also where she neglects

“her house and family, and in addition drinks, gambles, or pawns her husband's goods.”

14,523. (*The Earl of Derby.*) Without his knowledge?—Yes, certainly.

14,524. Is not that difficult to prevent?—I do not know.

14,525. Well, I will ask you after?—“3. Apart from the provision for separation already made a wife should be entitled in cases of cruelty and failure to maintain to obtain an order without it being necessary to first leave her husband. 4. Temporary separations are believed to have the effect of bringing the parties to a better understanding of each other, and it might be desirable to make all separation orders subject to review at the end of the first twelve months.” I will leave No. 5 out. No. 6. “No application for a separation where the complainant is not represented by a solicitor should be dismissed until it has been adjourned for (say) a fortnight to enable inquiries to be made by some person instructed by the court. 7. In the order for maintenance there should be a provision for serving a copy on the husband's employer in case the husband should neglect or refuse to comply with such order. The master should, under this provision, then be compelled to retain from the husband's wages the amount payable under such order and pay the same as the court may direct. 8. The provision for payment ‘to an officer of the court or to a third person for her use’ should be made compulsory where the applicant desires the same, and it should be the duty of the magistrates to inform the applicant that she is entitled to such provision.”

14,526. (*Chairman.*) Why do you leave 5 out?—I am told we are wrong in our premises as to No. 5.

14,527. They do not require residence?—They do not require residence in Manchester.

(*Chairman.*) Well, that is a very convenient summary. I am sure you must have taken a great deal of trouble to prepare it.

14,528. (*Sir George White.*) How do you get over the difficulty with regard to separations where there is no stipendiary magistrate, which applies, of course, to very large districts of the country?—Well, we have county court judges going circuit; why should not we have circuit stipendiaries.

14,529. That is your suggestion?—That is my suggestion.

14,530. As I take it your complaint against the lay magistrate is, that he refuses to grant separations when, generally speaking, you think the stipendiary magistrate would do so?—I do not say that altogether. I say the lay magistrate does not consider the legal point so carefully, and is more inclined to follow his own inclinations. If he has strong views either one way or the other he will let those views prevail.

14,531. Surely in the great bulk of cases it is not a legal question at all but is a matter of simple fact. Are you giving this evidence from your own experience of lay magistrates' courts?—No, not my own experience at all. I have no personal experience, but my department consists of seven counsel and 43 solicitors, and it is the combined opinion of these counsel and solicitors that the lay magistrates do not deal with the matter as satisfactorily as the stipendiaries.

14,532. The illustration you gave pointed to the fact that the separations are too difficult to get. I think our evidence at present has been quite the other way; that they are far too easy in granting separations?—Well, that may be so.

14,533. Altogether your committee feel it is not a proper tribunal to deal even with separation cases?—We do.

14,534. Then you admit fully as I understand, besides the disadvantage under which the poor and artisan classes are with regard to getting divorce that there is a large demand for divorce?—Yes.

14,535. And your remedy to provide a cheaper system is something in the way of either an ordinary assize court or a special assize court?—That is so.

14,536. Do you think that is going to reduce the expense largely?—It would considerably reduce the expense, because you would have them tried in the

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[Continued.]

district. You would also, in these smaller cases, have a lower scale of costs allowed.

14,537. But take, for instance, a district; you are speaking of something like four districts for the whole of England?—I was speaking of between here and Newcastle, for instance. I was not speaking of the West of England, because I am not familiar with that district.

14,538. Well, four districts for London and the northern counties, going up to Newcastle?—Yes.

14,539. Still, there would be a large amount of travelling and staying at an assize court for this work. It would be impossible to deal with the cases very promptly in many instances, would it not?—You are bound to have a certain amount of expense.

14,540. But this is an inquiry as to a remedy, you know, for a costly proceeding, and we want to see that it is really a remedy?—Yes; my difficulty in the matter is that you are bound to have a certain amount of expense if you are to try these matters efficiently.

14,541. You would not think the jurisdiction of the county court—if a court was set aside for the purpose—one special day of the circuit, set aside to try these cases only—you would not think that a proper tribunal?—I should as soon think of magistrates dealing with a murder trial finally.

14,542. Why?—Because I think it is quite important that matters which affect the status of a man and his wife should be dealt with by a judge of first instance.

14,543. But these county court judges are competent lawyers?—No doubt; we have some very excellent county court judges.

14,544. Then it would not be on a point of law that you would consider them incompetent?—But I really think the atmosphere of a county court is not the atmosphere.

14,545. But if they have a special day set aside as the day to deal with these cases, would not that be to a certain extent removed?—I think you would get people thinking that divorce was not a very serious matter after all, if it could be treated by the county court.

14,546. (Sir William Anson.) With regard to lay magistrates; you condemn them as dealing with separation orders, but not from personal experience?—Not from personal experience.

14,547. But from the opinion of a body of counsel and solicitors?—Yes.

14,548. That is to say professional opinion is against lay persons interfering with what they consider to be professional matters?—That is so.

14,549. But, as a rule, a bench of magistrates consisting of three or four laymen listening to facts which each one of them may be capable of forming an opinion?—Yes, in a county bench it may be very good; but still I do not think a borough bench—a city bench is as good.

14,550. When you get four or five men all anxious to do justice, and capable of forming an opinion on a matter of fact, and assisted by presumably a competent professional person like the clerk?—But are the clerks always professional persons?

14,551. The justices' clerks?—Yes, I do not think they are.

14,552. Well, I am only speaking from personal experience. I mean I think something is to be said for a tribunal so constituted?—Perhaps so, if the magistrates are strong men.

14,553. The law is fairly clear?—The law is fairly clear.

14,554. And the facts have to be settled in each case?—Yes.

14,555. And it is a matter on which the ordinary layman might form a sound opinion?—Yes.

14,556. As to whether a separation order should or should not be granted?—Yes.

14,557. After all there are several minds brought to bear upon it, and a stipendiary magistrate can only bring one?—That is so, but that is a trained mind.

14,558. You think two heads are not always better than one?—Not always.

14,559. Then, to pass on to the question of divorce, you would have a preliminary investigation?—Yes.

14,560. Conducted by whom?—By an official appointed to deal with these matters in the locality.

14,561. In every area?—In every area; in every high court registry, say. I do not know how many you would require exactly; that is a matter of detail.

14,562. Would you have one in every county court district?—I do not think so; I think the high court registries would be quite sufficient.

14,563. But you would always have a preliminary investigation?—I would.

14,564. Do you think then the matter might be dealt with at the assizes?—After the official is satisfied that there is a *prima facie* case.

14,565. And that would not create too great delay?—I do not see why there should be too great delay.

14,566. And then you would have a reduced scale of charges?—Yes.

14,567. And under those circumstances you think the law of divorce would be equalised as between rich and poor?—I think so.

14,567a. And that is what is desirable in the way of accessibility?—Yes.

14,568. But that some expense must be incurred?—Some expense must be incurred.

14,569. That is to say, if you make it too cheap you would get inferior justice?—Yes.

14,570. And too great ease of access to dissolution of marriage?—That is so.

14,571. You would make adultery penal in the case of both the man and the woman?—I think so. I know it is not generally recognised, but I feel very strongly on that point. I think you should protect the parties.

14,572. You would treat it as an invasion of the rights of the family?—I would.

14,573. And both parties would be equally liable to punishment?—Equally liable, according to the degree.

14,574. Are you satisfied with regard to insanity, that the possibility of cure?—Well, I have two cases before me (they are not poor people); one case where, after a lady had been married perhaps six months, her husband had to go to the asylum. She is still very young; the husband has since been home, but after being home a very short time he had to go back again, and the doctors say he will never come out again. That makes that girl a spinster all her life.

14,575. Would you put it on the ground of the hardship to the same partner, or to the undesirability of people subject to insanity procreating their species?—I should put it on both grounds. I was struck this morning by one case that was mentioned, where the man came out for a short time and there was another child born. I heard of a very similar case not very far from Manchester, and he is now in the asylum again.

14,576. With regard to penal servitude, I think you say for seven years. A man might be a very good husband who has, nevertheless, committed an offence which caused him to be sent to prison?—Yes. I do not lay too great stress on that recommendation; but at the same time, I think if he has been a very good husband it would not be enforced. It is only at the instance of the other party. It does not follow, as of course, it is only upon the application of the other party.

14,577. That is not a portion of your recommendation on which you have laid most stress?—No, it is not.

14,578. With regard to both divorce and separation, would you equalise the sexes?—I would.

14,579. In every matter?—Yes.

14,580. Under all conditions?—Yes.

14,581. Then in some of these cases the marriages take place very young?—Very young indeed.

14,582. Have you ever considered the possibility of making the marriage contract more formal. It has been suggested that in every case a civil marriage should have to be gone through?—I think it would be useful to go through a civil marriage in every case.

14,583. To require it?—Yes.

14,584. Would that lead to any disuse of the religious ceremony?—It might lead to a disuse of the religious ceremony in certain cases.

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[Continued.]

14,585. In what way?—Well, a lot of people go to church for the purpose of being married; it is the only time they ever go to church. Perhaps they go and have a child baptized at the church.

14,586. Do you mean that if they had to be married civilly they would not go to church at all?—I do not think they appreciate for one minute the solemnity of the service.

14,587. No, but do you think that the civil ceremony presents itself to the couple in a more important light than the religious?—No.

14,588. That the man does not think he is doing business when he goes through the civil ceremony?—I do not think they consider a civil ceremony at all. They are going to be married.

14,589. He does not think that he is going to incur legal responsibilities?—No, they are going to be married.

14,590. Whether they go before the local registrar or the parson?—Yes, that is so.

14,591. You know the ancient ceremony of the marriage taking place at the church door and the blessing of the church being conferred within?—Yes.

14,592. Do you think it would be possible to bring the two elements of the marriage ceremony as near together as that?—I do not know.

14,593. Do you think we can ever remedy all these troubles except by raising the standard of morals?—No, I do not.

14,594. (Mr. Burt.) I understand you to be opposed to giving the county court judges jurisdiction in divorce cases?—We are.

14,595. Would you be in favour of giving the power to stipendiary magistrates?—No.

14,596. Your objection would apply to both cases?—Absolutely. Not on the ground that the court is not capable, but the atmosphere of the court is wrong; it is a wrong atmosphere to take the people into.

14,597. Of course you do recognise the desirability of giving the poorer people better facilities than they have at the present time for using the law?—Yes, I do.

14,598. And you have made certain suggestions?—Yes.

14,599. With the view of diminishing expenses and such like?—Yes.

14,600. (The Earl of Derby.) Mr. Wrigley, you say the husband should be entitled to separation when the wife pawns her husband's goods. That is in your general summary?—Yes.

14,601. Is not that a little difficult?—"When she neglects the house and in addition —".

14,602. Oh, "in addition drinks"?—Yes, "in addition drinks, gambles, or pawns."

14,603. Then one other question. In your summary No. 7 you say "There should be a provision for serving a copy of the order on the husband's employer in case the husband shall neglect or refuse to comply with such order"?—Yes.

14,604. May not that be very hard on the husband?—Are we to consider the husband if he will not support his wife?

14,605. Would it not possibly mean in a great many cases that the employer would say, "I cannot have this trouble with you; I will let you go"?—I do not think it would come to that. I think the fact that he knew the master might have this served on him would help him keep to his payments.

14,606. You think the sword hanging over him?—Yes, a kind of sanction.

14,607. But you do realise that if it was in force in nine cases out of ten the employer would get rid of the man altogether?—I think he would.

14,608. And the wife would be as badly off?—She would be in no worse position.

14,609. And the man would be penniless?—Yes, he must be punished.

14,610. (Lord Guthrie.) Have you any solicitor who acts for your society as the last witness acted for a similar society in the way of carrying through cases?—No, we have not, my Lord; we work under regulations approved by the Manchester Law Association, and that provides for a rota of solicitors who will accept work from the Settlement, and the solicitors on

that rota are expected to take the cases as they are sent to them, whether they are good or bad.

14,611. On the usual terms?—They can make whatever arrangements they like with the people, but generally we find they are not hard on the poor folk.

14,612. Then have any cases which have come before your poor man's lawyer been prosecuted in the High Court—for divorce?—We have never sent a divorce matter to a solicitor.

14,613. Why?—On the ground of expense. We will not do it. We are not going to send that person away with the view that he or she is going to have a wrong redressed when we know that it cannot be done.

14,614. Could you give any idea of the cases that have come before your society which appear to be *bonâ fide* cases, and in which no remedy was available?—Well, I believe that most of these matters in D1 to D70 are *bonâ fide* cases in which there is no remedy.

14,615. In the centres that you propose—in the provinces—do you contemplate that these courts should consider divorce cases for the poor only, or for all persons?—For all persons.

14,616. Persons in the provinces would have their choice; they could come to London if they liked?—That is so. Of course we cannot prevent them coming to London, but I think in most cases they would be tried in the provinces. I may say my view in making centres is that you should have a strong bar, and you cannot have a strong bar if you have it in every little county court district.

14,617. But if it be the fact that you only allege grievances as on the part of what you call the poorer classes, why do you go further and propose a remedy which involves taking cases of the better classes outside London if they are not complaining?—Well, for this reason, that at the present time the middle classes feel the pinch very considerably. It is an expensive thing to have divorce proceedings instituted against you or to institute divorce proceedings.

14,618. That is exactly what I wanted to know. You used the expression that there was an absolute demand amongst the poorer classes?—Yes.

14,619. Do you mean by that that there are two classes; there are the working men who are able to pay almost nothing except the expense of witnesses?—Yes.

14,620. And there is the class above that who could pay a moderate amount, but cannot face the London charges?—That is so. Well, I remember a case some years ago which was undefended; they proceeded for restitution and afterwards for divorce. The taxed costs in that matter amounted to, I think, about 90l. Apart from that there were interlocutory proceedings and dealing with the ownership of the furniture. Now the petitioner was a Leeds woman and the respondent was a Manchester man. The furniture had been purchased in Leeds, and the wife took out a summons for determining the ownership of the furniture. Each party had to pay their own costs, and to prove the ownership of that furniture it cost 110l. for the respondent, and, I have no doubt, the petitioner's costs would come to about 120l. or 130l., owing to the expense of having to keep running up to London.

14,621. Then does it come to this, that for what you call the better off of these classes it would be sufficient if you had local tribunals?—I think so.

14,622. For the working people you would require in addition to have a system under which they have free counsel and agents?—Yes.

14,623. And the remission of court fees?—Yes.

14,624. These must be considered separately?—Yes, absolutely.

14,625. The circumstances are of course entirely different. With regard to the suggestion that adultery should be treated as a subject for punishment, you have referred to that as the opinion of the Working Men's Association. Is there any legal opinion to that effect?—Well, I was surprised to be supported strongly by the solicitors representing my department.

14,626. Have you seen any evidence of what I might call public opinion to that effect?—No. I might mention that several people who have had this mentioned to them seem to be very strongly in favour of it.

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[Continued.]

14,627. Would you punish a man in the case of the adultery being with a wife whether he knew that the woman was married or not?—Well, I think it would be very hard to do so.

14,628. You do not propose to punish fornication?—You cannot.

14,629. It is the element of the injury to the family that you think introduces the right of the State to treat it by way of punishment?—Yes.

14,630. You said that people seemed to attach little importance to their married duties. They attach importance, do they not, to the fact of being married?—Well, I think they consider it to be respectable.

14,631. Do not you find, Mr. Wrigley, that when people live together not married they use the married expression Mrs. so-and-so?—Oh yes.

14,632. And such women though not married will wear a marriage ring?—Yes.

14,633. That seems to show that they attach importance to being married?—Oh yes, to being married, but only to save themselves from the stigma.

14,634. As to publication, would you have the courts themselves open or shut?—Well, I do not know; it would be difficult to close the courts except in very bad cases, but I think if you prevent publication in the ordinary sense you would practically close the court.

14,635. With regard to what you said, that you think in the case of the very poor provision would have to be made to pay barrister and agents; do not you think a system could be devised under which the younger members of the profession could act annually without payment?—I can quite see that that might be worked. Of course, in Manchester we could arrange for that, but I could not say for other centres.

14,636. (Mr. Brierley.) I should just like to ask you a question as to the meeting you mentioned at the Ardwick Men's Club, because I think you and Mr. Peacock, who founded his opinion on the result of this meeting, are the only witnesses who have told us that working men might think it derogatory to them to bring their cases to the county courts?—Yes.

14,637. Why do you say that is a representative body. I do not say it was not; but why do you say it was?—Well, because there were such different classes of men. There was the very respectable working man who came washed and dressed to the meeting, and there was the other man who came just as he came from his work, and there were all classes.

14,638. Could you tell me about how many were present at the meeting?—I should think between 40 and 50.

14,639. Was it carried on in the form of a debate?—Yes.

14,640. Did many working men speak?—Oh, they all had something to say. I was asked to go down—

14,641. Did the solicitors also speak?—No, there was only Mr. Oppenheim and myself.

14,642. Did Mr. Oppenheim speak first?—He did as chairman.

14,643. I mean, did he give a sort of lead to the meeting?—No, I gave a lead in suggesting this, and I was surprised they should take it up so readily.

14,644. I think Mr. Oppenheim gave a lecture in the same place or somewhere after that. I saw a long speech reported in a local paper?—Yes.

14,645. I do not know whether that was at that meeting?—No, that was nothing to do with this.

14,646. Was any resolution passed?—A resolution was passed which carries out the suggestions here, or the suggestions here carries out the resolution.

14,647. Do you know if the resolution was carried unanimously?—Yes, absolutely. I was surprised because I must say I mentioned it with some fear before these working men. I did not think they would take this for one moment as their idea.

14,648. Then as to the suggestion that the lay magistrates should not make separation orders. You do not go yourself at all before them?—No.

14,649. And you make this suggestion from statements made to you?—Yes.

14,650. I suppose no witness could be more experienced than Sir William Cobbett, whom we have already had?—That is so.

14,651. And you would probably be inclined to agree if he said, as he has said, that the jurisdiction of the magistrates was extremely desirable in these cases?—Oh, I would not contradict Sir William in any way; I think he is a leading opinion.

14,652. I mean he has an exceptionally large experience?—Yes.

14,653. (Sir George White.) Might I ask this question for information. Was this meeting called on purpose to consider this question?—Cheaper divorce for the working classes.

14,654. Just an ordinary meeting of the club?—Yes.

14,655. (Chairman.) And the result was these recommendations?—Yes.

14,656. Would your view be that the local tribunal should be open to any suitor?—I think so.

14,657. Whether they have means to come to London or not?—Yes.

14,658. Possibly with power of removal?—Yes, I think all cases might be tried in the provinces as well as in London.

14,659. Then you referred to a strong bar. Is it your opinion that this class of case, whether poor or rich, should be represented by the bar?—Oh, I think so.

14,660. Will you give the reason for that?—Well, I am not an advocate, and we always go to the bar for any matter; but I really think it is much more satisfactory.

14,661. You see there would be two classes of cases; those that could afford, where there would be no difficulty in employing the bar?—Yes.

14,662. And those that could not, which might be dealt with by your suggestion as to a Poors' Roll?—Yes.

14,663. Would your suggestion be that in either case the barrister would tend to the dignity of the court and the solemnity of the occasion?—Yes. I think you would find counsel to take these cases.

14,664. Do you distinguish it from the debt cases?—Yes.

(Chairman.) I think I ought to thank you on behalf of the Commission for the enormous trouble you have taken over this matter, and the advantage we have had in having your evidence.

Adjourned.

Winchester House, St. James's Square, London, S.W.

TWENTY-SECOND DAY.

Tuesday, 31st May 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace The LORD ARCHBISHOP OF YORK.
The Right Hon. THOMAS BURT, M.P.
The Hon. LORD GUTHRIE.

Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
EDGAR BRIERLEY, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

His Honour Judge ALFRED HENRY RUEGG, K.C., called and examined.

14,665. (*Chairman*.) You are the County Court Judge for North Staffordshire, and Joint Judge of the Birmingham County Court?—Yes.

14,666. How long have you been a judge?—Not quite three years. I may say that I sat as Deputy Judge before.

14,667. Can you give us any idea of the population you have to deal with in those districts?—In North Staffordshire, the chief of my courts are the Pottery courts, and they are united now in one large town, during the last few months.

14,668. Where do you sit?—I sit in the five or six places in the Potteries, but they are now one town, the County Borough of Stoke-on-Trent, which has a population of approaching a quarter of a million. Then there are the other outlying towns, and Birmingham is very large, I believe something approaching 800,000 or 900,000.

14,669. You have two judges there?—Yes.

14,670. Who is your colleague?—Judge Amphlett.

14,671. It was suggested by one or more members of the Commission that he should be invited to come, and he was invited, and you have spoken to him?—Yes. He told me unless absolutely wished he did not see any advantage in his coming.

14,672. We had a letter saying he did not think it was useful you should both come?—He knew I was coming, and you have also had the chief registrar of Birmingham.

14,673. Then we may take it you represent your district? First of all, I would like to ask you your opinion about the establishment of local courts for the purpose of dealing with these matrimonial cases?—Do you mean new local courts?

14,674. Any?—I think strongly if it is to be done that the county courts are the only possible courts. It seems to lie between the county court, the magistrates, and what may be called a new local court.

14,675. There are assizes also?—And the assizes. I think the assizes absolutely prohibitive.

14,676. Why?—On the ground of expense, largely; in fact, I think entirely on the ground of expense. Divorce by the magistrates, I think, would be divorce by the magistrates' clerk. I do not understand that anybody would be strongly in favour of that.

14,677. You mean he controls the court in a large sense, except where there is a stipendiary?—Yes. In the country there are so few stipendiaries, they are almost a negligible quantity.

14,678. Would the idea presented of a judge of the High Court going round commend itself?—I think it would be impossible. He could only come to the counties, the county town, as on circuit. I think there is the same objection, the expense would be quite prohibitive.

14,679. With regard to the county courts, would you be in favour of giving the jurisdiction to every court, wherever it sits, or would you require cases to be heard where the preliminary proceedings take place?—I know it is a very difficult question, but my opinion

is that every county court ought to have the jurisdiction in the town where the court is situate. That is my view.

14,680. Do you think that would be detrimental to the people? It is suggested if it was brought too near it would become a bad thing for their morals?—I have never considered it from that point of view. I do not see why. They will get it, or the greater part of it, in the halfpenny newspapers, if they do not have it heard in their town. Any case which concerns their town would be sent at once.

14,681. Are they always reported?—I think in every case. Any little case which has the least local interest is at once sent to the paper in the town. I have followed the evidence given before this Commission as far as I could from reading it in the newspapers, but I have only heard the suggestion of the assizes, the magistrates, and the suggestion which, with great respect, I think absolutely impracticable, the suggestion made by Sir John Bigham as to affidavits being prepared in the country and sent up to London, and divorce granted or withheld upon affidavit. That seems to me absolutely impracticable.

14,682. You would agree, wherever the trials are held, it would be desirable that they should be held on special days, or would you sandwich the cases in between debt and other cases?—In the very small courts sometimes we have really no work. There are one or two little courts one goes to, and you leave in half an hour, and sometimes less. Except in an exceptional case, in such courts it would hardly be necessary to have a special day for divorce. In the larger courts I quite appreciate that it would be necessary. In Birmingham, for example, it would be absolutely necessary, and any other large court.

14,683. Why do you say that the assizes could not deal with the matter in Birmingham, assuming that the procedure was of a fairly simple character?—In the assize towns I think you would find that the expense would be quite prohibitive. In the first place, you must have counsel, that means a counsel and a solicitor, solicitor instructing counsel, and so on. I think it would be absolutely prohibitive.

14,684. The next point you mention in your memorandum is with regard to the system of judicial separation at present under the magistrates' orders. What is the point you have to present to us?—I rather wanted to put it in the form of a query: would the idea be that the county court should take that jurisdiction or not?

14,685. I have not yet got to the jurisdiction. I was coming to that. I do not know whether you have your memorandum. May I read it, to remind you of the point: "I think the present system of judicial separation by magistrates' order necessarily involves 'injustice where one party is entirely innocent, and leads to immorality.'" That is the point?—That is only an opinion formed, as would be formed by any other member of the public.

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14,686. Why does it involve injustice where one party is entirely innocent?—Because it leaves that party unmarried in effect, and likely to contract some other union.

14,687. Where the innocent party seeks to obtain the separation and gets it, it leaves him or her practically unmarried, and your view is that that conduces to immorality and is an injustice to that party?—I think so.

14,688. The next point is whether there should be an enlargement of the grounds for divorce?—My own opinion upon that is that there ought not to be.

14,689. Will you give us the reasons?—I think at all events the present time, if it is proposed, and if the idea should be carried through of extending divorce to the working classes, or rather removing a barrier which now prevents them having access to the law, would be a peculiarly inappropriate time to extend the grounds of divorce.

14,690. Will you explain why?—I do not think the country would be prepared to go the whole way at a time when you are making such a long step forward in practice—after all it is only in practice—at the same time to extend the grounds of divorce. Up to the present time at all events we have taken a more or less consistent view as to the grounds on which divorce should be granted, and we have confined ourselves to an absolute breach of the marriage contract itself. If we are going further and going to say serious misconduct is to be sufficient, or, still more, misfortune, pure misfortune, is to be sufficient, I think you are opening a very wide door.

14,691. Would those observations be applicable to such a breach of the marriage contract as involved in desertion, by going to the colonies or America?—I think so. I think it would open the door. If you at once admit desertion how could you say you would shut it upon gross cruelty; and if not on gross cruelty, why on very serious misfortune which makes it absolutely incompatible that the contract should be continued?

14,692. Do you consider in a case of gross cruelty where it is unsafe for the wife to live with her husband, it would be desirable to retain the marriage tie?—I think so, at present.

14,693. Does it involve an idea that at some future stage it might be reached?—My own view, as far as I have been able to form it, is against it. I appreciate it might be reached in the future.

14,694. I want your view because you introduce the words "at the present time." I do not follow what is in your mind?—I was meaning the present time. I think the present time is particularly unsuitable, if it is suggested to make this wide step in advance by bringing divorce within the reach of the working classes.

14,695. Why do you fix on the present time as distinguished from any other time?—Because I do not think the country is ripe for the two great advances. In my view the one is not an advance, but for the two things together.

14,696. Does that involve the idea if the country becomes more ripe and more educated, your view would change?—No, I do not think my view would change with reference to that point, but I can appreciate at some future time the country might say, "We will extend the grounds for divorce." I do not think the present is the time for it.

14,697. The next point you have dealt with is as to the proper court being the county court if it is granted, and you think no other court possible?—I do not think any other court is possible.

14,698. Another important matter is whether you consider that would lead to congestion of the business of the county court. You are speaking for two busy districts?—Yes. We have no congestion in our districts at all.

14,699. Would your times admit of an addition of business, to cope with this work?—Certainly, in the smaller courts. In the larger courts, like Birmingham, I am not so sure. Birmingham is the largest court in the kingdom by far. We are always busy at Birmingham.

14,700. Suppose your business was added to by such work as this might involve, could you cope with it?—I think we could.

14,701. Do you think, if that were done, procedure and rules could be easily arranged?—Yes.

14,702. As to fees, what have you to say?—I think the fees ought to be very small. Until I had the experience of the last few years with a large number of the working classes I had not an idea what a very small sum of money meant to these people.

14,703. Are they too high at present for their ordinary work?—In my judgment far too high.

14,704. Can you give an illustration to show that?—You are speaking of the court fees proper?

14,705. Yes?—The court fees are 15 per cent. of the amount claimed. If you issue a summons for 5s., and it is not at all unusual to get summonses for a few shillings issued by servants and people of that class the fees are 3s. in the £.

14,706. Up to what figure?—Up to 20l., so that the fee that has to be paid by a girl who sues for 5l. is 15s.

14,707. That is taking the fees from beginning to end?—No, the hearing fee plus the entry fee.

14,708. The total fee?—It is not the total court fees, because there may be execution fees and other fees. It is the fees up to hearing.

14,709. The entry fee and hearing fee amount to 3s. in the £ up to 20l.?—Yes.

14,710. After that?—After that it is a fixed sum. The plaint fee is 1l., which is 1s. in the £, and the hearing fee 2l.—3l. is the maximum.

14,711. If the maximum goes up to 100l. it is no greater?—No.

14,712. That is to say, the fees are heavier in proportion to the amount the lower you get down?—Yes. We have cases of 1s. entered at Birmingham. The registrar told me that. I have never seen them. We have plaints for 1s. on which the fees are 3s. There is nothing less than 3s.

14,713. Your view would be if this jurisdiction were given to county courts, low fees would have to be introduced for that purpose?—No fees, or very small fees. May I add this. When the matter is not a money one, take, for example, a claim for an injunction, I think they are always calculated on the maximum fee, that is 3l., and I am very much afraid if it was to be left to the uncontrolled discretion of the Treasury to frame fees in divorce, that would be the fee that they would probably hit upon, the fee where no amount is claimed.

14,714. You have quite sufficiently drawn attention to the point. With regard to security for the wife's costs, you propose that they should never be allowed to exceed 5l.?—I think that is almost prohibitive, and I think it would not be possible for the husband, a member of the working classes, to provide more than 5l. as security.

14,715. What is the wage of the working man you have in mind?—In the potteries they vary very much; there is such a deal of intermittent employment there, and a large number of potters are not employed through the week, three and four days at 5s. a day.

14,716. What is the average wage for a competent man there?—It is very difficult to say. 25s. if he works all the week, perhaps 30s., but he rarely does—at least I will not say rarely does, very often he does not.

14,717. You think that the officers of the county court could act without difficulty if there was jurisdiction?—I think so. The officers of the county court are an admirable body of men.

14,718. You suggest as regards the King's Proctor that he might utilise the registrars of the county court?—I think he may do it well, with the assistance of the large number of men the registrars have under them.

14,719. With regard to the right of advocacy, you do not desire that to be confined to the bar; you add that you would give it to the parties themselves if desired?—That is always the case.

14,720. All decrees you propose should be registered in London?—I think it would be absolutely necessary.

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14,721. And made absolute in the court granting the decree?—I think so.

14,722. And the King's Proctor's intervention dealt with in the same court?—I think so.

14,723. You also propose that if the judges had this jurisdiction, if necessary, they should have a deputy approved by the Lord Chancellor if the business should be in arrear?—Yes.

14,724. Not to take the divorce jurisdiction?—No.

14,725. You refer to the Registrars being examined by this Commission. We have had your senior Registrar?—Yes, since I wrote that memorandum.

14,726. What is your view about the publication of proceedings?—I think that ought to be left to the judge.

14,727. For him to control?—Yes. I think he would do it easily, especially in the provincial newspapers.

14,728. There are one or two particular points of which you have given a very short note upon which I want to ask you a few questions. You think there should be a duty on the judge to endeavour to reconcile the parties wherever possible?—I do.

14,729. With regard to appeal, have you a view to express about that?—I thought the question of appeal was one of the most difficult questions the Commission would probably have to deal with. I have thought about it, and I cannot arrive at any very satisfactory conclusion. I see great difficulties in allowing an appeal.

14,730. What would you suggest?—So far as I have been able to think of it, I do not think there ought to be any appeal in the case where the petition is dismissed.

14,731. And if allowed?—If allowed it involves the question of character, which is an important question. My feeling would be in favour of appeal in a case of that kind, but I think the practical difficulties are great. For example, the most difficult question would be this: If a charge of misconduct is proved and the wife wishes to appeal, is the husband to provide the means?

14,732. I am not sure whether you are not attaching more importance to this than it deserves, because experience has shown that the appeals in the divorce jurisdiction are extremely few. I cannot remember an appeal in one undefended case, except where there was a serious point of law raised which governed masses of cases. Practically there is no appeal?—Not in defended cases?

14,733. No, so few that you must almost treat it as a non-existent quantity. However, you have expressed your point?—Take the case of the working man who divorces his wife. She loses not only her status but her means of support. There would be a great temptation to her to try again, if she could, to appeal.

14,734. That is true. Still I might remind you that 70 or 80 or more per cent. are undefended cases, and my experience was it was an exceedingly rare thing. I only remember one or two instances of the petition being dismissed, and therefore there is no probability of any appeal in those cases. In the defended cases it is different, but even there the practice in our division has shown there is very little trouble about appeals. However, you think that must be carefully considered?—Yes, I think so.

14,735. You have a note, which is before me, upon the point of *in formâ pauperis* proceedings?—I think there ought to be some power given to the judge in a proper case to allow proceedings *in formâ pauperis* to be taken.

14,736. In the county court?—Yes.

14,737. Have you no powers at present at all?—I am not sure. I have never known them exercised.

14,738. Your next note is upon judicial separation. Have you dealt with what you want to say about that?—I only wanted to say I think it ought to be in the power of the judge who tries these cases to say if a divorce cannot be granted, "I am not satisfied to grant a divorce," but allow him to grant a judicial separation in the same proceedings.

14,739. What do you say with regard to juries?—I would not alter the present system obtaining in the county court with regard to a jury. At present either party has a right to a jury.

14,740. Would you leave it to the judge's discretion?—No, to the parties themselves.

14,741. The only other point is you think the plaintiff fee should not exceed a certain sum?—I do not think it should exceed 10s. or 1l.

14,742. (*Sir George White*.) I understand you are in favour of extended facilities for getting divorce?—Yes.

14,743. But your objection, or your main objection, at any rate, to extending the grounds of divorce is that it would be inopportune to take two at the same juncture?—I think it would be inopportune. I have other objections. I think the present time would be peculiarly inopportune.

14,744. With regard to fees, it has been put before us by a witness yesterday who advocated the jurisdiction of assize, that the costs of an assize case would not necessarily be more expensive than the county court fees, if cases were placed on either B. or C. scale. Is that your view?—On either B. or C. scale of the county court?

14,745. Yes. It was agreed the assize court was a proper court, and when the question of expense was put he said the expense would not be more at an assize than in the county court under B. or C. scale?—If they were put under B. or C. scale they could not get more than the B. or C. scale allows, but if left to an ordinary solicitor's action and his bill of costs I am sure it would be a great deal more than on either scale B. or C.

14,746. I understood you to say you were in favour of the county court judge dealing with judicial separation. I did not understand that you would remove the cases from the present magistrates' court?—No.

14,747. But that in cases where they could not grant a divorce they should have a power of granting a judicial separation?—Yes.

14,748. (*Mr. Burt*.) You are in favour of giving the county court judges jurisdiction over divorce cases?—Yes.

14,749. Mainly because of the convenience and of the smaller expense to the poorer classes?—Yes.

14,750. It has been suggested as an objection to that that it would probably result in considerable diversity of judgment. Do you think that there is anything in that objection?—I do not think so. I think that the jurisdiction would be a comparatively simple jurisdiction. It is a jurisdiction not of law; it would generally confine itself to one question of fact which I think, at any rate I hope, the county court judges are capable of dealing with. If they are not I do not think that they are capable of dealing with a very great part of the jurisdiction they deal with at the present time.

14,751. (*Lord Guthrie*.) In how many places where you sit is there a bar of barristers?—At Birmingham only.

14,752. How many may there be there?—We have a great number there, 20 or 30 local barristers. We have one in the Potteries.

14,753. In how many places where you sit is there not a strong bar of solicitors acting?—I think there is a fairly strong bar in all the places. Practically you get the same men coming from one town to the other.

14,754. We have been told that there is a strong sentiment in many parts that divorce cases are so important that they should be connected in some form or other with the High Court. Do not you think there is principle for that?—I do not indeed, I do not see why.

14,755. Take criminal cases where the interest of the State is concerned, murder, rape, arson, bigamy, treason. The interest of the State arises, I take it, in all these cases as compared with ordinary private thefts. These are all relegated to High Court Judges?—I believe they are.

14,756. Do you not think, the interest of the State being clearly concerned in divorce cases, that the same principle should apply, and that there is really a

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principle in the sentiment that is certainly prevalent?—I think there would be some advantage in giving the jurisdiction to the High Court Judges.

14,757. If some arrangement could be made for connecting these cases with the High Court you would prefer it, but you do not think that is practicable?—So long as it is practicable, that means so long as it is done at very small expense. It seems to me incompatible with any procedure in the High Court.

14,758. It is the fact, if you take civil actions, that the interest of the State is perhaps more concerned with cases of divorce than with any other kind of civil action?—Yes.

14,759. I do not know, are there any cases in the Civil Court in England which are confined to the High Court apart from the question of amount, as in a criminal court they are confined to certain criminal cases?—Yes, there are cases where the inferior courts have no jurisdiction.

14,760. Such as what?—Breach of promise of marriage.

14,761. (Chairman.) And also libel and slander?—Yes, and seduction. Those are the excluded cases.

14,762. (Lord Guthrie.) You said at the present moment you thought that there was a clear principle, namely, that divorce was confined to cases of breach of the contract of marriage?—Yes.

14,763. In your view are there not two essential conditions in the contract of marriage: first fidelity, secondly permanence? In a case of malicious desertion where a husband has said and shown by his conduct that he means to have nothing further to do with his wife or his children, in the way of any relations, financial or otherwise, is not that a breach of the term that he shall adhere to his wife?—Yes, in one sense of course it is.

14,764. Are not these two cases in a different category from lunacy or crime or habitual drunkenness?—Yes.

14,765. So far I mean?—Yes.

14,766. You said you did not think the country is ripe, but you quite understand that a commission may have to report upon a whole subject whether it thinks that legislation is likely to follow or not?—Yes.

14,767. (Sir Lewis Dibdin.) I gathered your view was in favour of a local court, but you are against the assizes as impracticable on the ground of expense?—Yes.

14,768. Have you also considered Mr. Justice Bargaive Deane's suggestion that a divorce judge should go round to the different centres?—Yes, I have considered it. I heard the suggestion, but I do not think that would be practicable.

14,769. The difficulty of expense is not so marked there as at assizes. What I mean is this, I think his suggestion was that there should not be—I do not know how to phrase it, the trumpets?—The paraphernalia.

14,770. Yes, the paraphernalia of assizes?—Yes, that is the only part of the expense that does not fall on the litigants.

14,771. No doubt you are considering the matter not only from the point of view of the litigant but from the point of view of the Exchequer and the State?—I am afraid I have not.

14,772. Supposing the matter of expense were met do you think that would be a wholly impracticable idea?—I think it would, because if you had a judge of the High Court travelling round it would be only another kind of assize. He must take the large centres and he must have a list at those centres, and it would mean that he must sit probably more than one day and that would mean all the expense which we now get at assize trials, by cases being thrown over from one day to another, and witnesses kept, in the county town.

14,773. It occurs to me that this question largely depends on your view of another question. Do you think, supposing the jurisdiction were enlarged and extended to the county court or small local courts, that there would be a very large increase in the number of divorce cases in the country?—Of course, it is very

difficult to say. I really do not know. I could not express an opinion. I think it is very likely that there will not be nearly so many as some people anticipate.

14,774. Suppose there were not many it would not be impossible for an extra judge, perhaps a judge from the Divorce Court, to deal with the cases?—I daresay one or two judges could do it, but that is not my objection. My objection is the expense to the suitor, to the petitioner and to the respondent. Until one has sat as a county court judge and had to deal with the poor I do not think one appreciates (at least I had never appreciated) what a matter a few shillings is to them. I make orders on people to pay upon judgment summonses every week, and there are hundreds of them, and many of them are for one shilling, and I am satisfied that one shilling is the utmost they can pay a month. In some cases one has to make orders smaller than that, for 6d. a month.

14,775. I am assuming if you get the London judge down there that the fees and expense would be regulated on the scale you are proposing for county courts?—The fees and the expense of the court are not the expense of a trial. The expenses of a trial are the lawyer and the witnesses, and the bringing of the witnesses and paying their expenses, and keeping them there, and paying them as witnesses.

14,776. Why would those expenses be greater with a judge going round than with a judge in the county court, subject to the multiplicity of centres? Is that the point, the difficulty of going to Birmingham or a remote part of Warwickshire, rather than to the nearest county court?—No, that is not my difficulty. If it was proposed to send a High Court judge to every town where the county court is held I am satisfied that the judge would do it better.

14,777. To every town?—To every town where a county court is now held, but that would be impracticable, you would want a large staff of judges.

14,778. The effect of choosing some of those towns would be, I think, that it would be easier to get to the particular centre where he was sitting than to London. Still it would not be so easy as getting to the nearest county court?—No.

14,779. That is the difference of expense?—I think centres for the county are almost impracticable.

14,780. On that ground?—Entirely on the ground of expense.

14,781. The difference of the expense of going to the nearest county court and getting to one of these centres?—Yes.

14,782. You realise that the point which has been put to us, and the ground upon which it has been pressed, that a High Court Judge or a special judge should be employed at any rate, is very largely that divorce has been a matter of special knowledge and special practice in England, and it is said from its nature that it ought to remain so. Do you think that there is anything in that?—I do not, indeed. I do not think that special knowledge is required.

14,783. We talk about it being a High Court matter, but nobody knows better than you that it is a very small section of the High Court Judges or counsel who know anything about it. You do not think that there is anything in the nature of the subject which renders that necessary?—I do not think so.

14,784. Another ground of expense is the employment of counsel. I gather from your answers your view is that counsel are not necessary, and you think that the same rule which now obtains in the county court should obtain?—Yes, either the parties or a solicitor.

14,785. I have no doubt that your attention has been drawn to the report of the Committee of which Lord Gorell was chairman last year, in which they lay stress upon the necessity of employing counsel in these cases, I think particularly undefended cases?—Yes.

14,786. You do not agree with that?—I agree to this extent. I should very much like, if I had to try the case, to have counsel before me, but I think it is again impracticable.

14,787. You do not think the necessity for it is so urgent that you would rather not extend the jurisdiction than concede it?—No.

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14,788. I did not follow your view about the congestion of business in your courts. You assert in the small country courts that there would be no congestion of business?—No.

14,789. But those are not the courts where the bulk of the divorce cases would occur?—No.

14,790. It would be in such places as Birmingham that the bulk of the business would be?—Yes.

14,791. I gather that your time is fully occupied there?—Yes, at Birmingham certainly.

14,792. The fact of a second judge being brought in is evidence of that?—Yes.

14,793. You do not think it would be impracticable to deal with divorce cases?—I think not. We might want some little assistance occasionally, probably we should.

14,794. I do not know whether you are familiar with county courts in other districts?—Fairly.

14,795. We have been furnished by the Bar Council with correspondence containing records of a good many cases in other county courts, where there appears to be so great a congestion of business that there is a very long delay in dealing with particular cases, but I ought to add that I have looked through that schedule and do not see a case in your circuit?—We have no congestion, but I do not know any circuit near mine where there is any congestion. If I may put a question to you, is not the congestion almost confined to courts in London?

(*Sir Lewis Dibdin*) No, it is not. There are a good many London cases, but there are a good many cases in the country.

(*Chairman*.) May I suggest this, that a good many of those cases are due to a day being allotted to the cases and the day not enabling the work to be finished, and then it having to be adjourned further.

14,796. (*Sir Lewis Dibdin*.) That is the cause. The reason I am asking about this is because it suggests to me your experience at Birmingham may not be the same as the experience in other parts of the country, for instance, our colleague, Judge Tindal Atkinson, who is not here at the moment, has many cases in his division where there appears to have been great delay, although we have not heard his explanation yet?—He has a very heavy district. I sat in his district.

14,797. We must not too readily take Birmingham as a typical centre although it is a very large centre?—I have sat in the courts in London before I was appointed, and I have sat in North Wales for a month or so, and also in South Wales, and I have never found any arrears.

14,798. I want to ask you about appeals. You see a great difficulty in what should be done about appeals, but I did not gather whether you had any suggestion to make with regard to them beyond a statement of the difficulty?—I really do not think I have. I see such a great deal of difficulty. I think where a petition is refused there ought to be no appeal.

14,799. Where it is granted there is great difficulty. It is not quite the same thing as appeals from the present Divorce Court because I can conceive there being a much greater desire to appeal from a county court than from the Divorce Court, which, speaking with all respect, is a higher court?—Yes, I can conceive that it may be so.

14,800. The fact that there are no appeals in the Divorce Court does not show what would be the result in the county court?—It is an indication. I do not think it shows necessarily that there will not be more appeals from the county court, I should think possibly there would be more appeals from the county court.

14,801. You were asked by the Chairman as to the difficulty some witnesses felt, that a very wide distribution of divorce amongst local courts would be bad

for public morals. You took that as meaning the dissemination of the reports of cases, but I do not know whether that was in the Chairman's mind or not, although that has not been exclusively the basis of the objection. It was rather that the making divorce so easy and bringing it to every man's door, as some witnesses have called it, would have a deleterious effect upon public morals, in loosening the sense of permanency and sanctity of the marriage tie. Do you think there is anything in that?—No, I do not indeed.

14,802. You are dealing with a class?—I hope it will never be easy. I think there are many other restraining influences. I do not think the question of money ought to be a barrier. I hope there will be always many restraining influences. At present there are many such influences, the influence of the family, and the influence of affection, even if only past affection, and a number of other influences which ought to be much stronger than any money barrier which may be interposed.

14,803. I do not wish to lay stress upon the money barrier, I follow what you say about that, but in other respects you are not in favour of divorce being made too easy?—No, I hope it will never be made easy.

14,804. Take the case of an agricultural labourer, if he gets to know of it, as he will soon, it will become common knowledge as soon as it is the fact, he has only to go into the next town and issue a plaint in the same way as you issue one for the recovery of a debt, and in a fortnight the case will come on, the question being whether his marriage is to be dissolved or not, one of the most important things in his life, will not that be likely to loosen his feeling and the feeling of his wife all through life as to the permanence of the marriage tie, rather than if he knew he could apply for a divorce, if there was a case, but that it would be attended with great difficulty and involve a good deal of sacrifice on his part?—I do not think so.

14,805. (*The Archbishop of York*.) I am sorry I was not here when you gave your evidence in chief. You said just now that you thought in trying cases involving divorce no special knowledge was necessary. Do you think that it has been a mistake to have a special high court to deal with these cases?—I do not think I should say that.

14,806. Would it not follow. Why should these cases not all along have been tried by the ordinary judges?—I do not see why they should not. It is a mere question of convenience I should think.

14,807. You think that the legislature was wrong in attaching importance to a special branch of the High Court?—I do not say that they were wrong, I think it was a matter of convenience.

14,808. You would say that it was unnecessary?—Yes, I think so. I do not think that anyone would suggest that the judges of the High Court are not competent to try the questions which are raised in the Divorce Court.

14,809. It is not a question of the competence of the judges, but the peculiar character of the question. Your opinion would be that the reasons which led the legislature to recommend a special branch of the High Court were unnecessary?—I think so. I do not know why you should have one.

14,810. (*Chairman*.) Nearly all the judges appointed in that division had no experience of it before they were appointed?—I do know that within the last 20 years.

14,811. (*The Archbishop of York*.) You think that they require special experience?—I think the experience can so easily be acquired.

(*Chairman*.) I must thank you very much on behalf of the Commission for your evidence.

Mr. FREDERICK FREEKE PALMER called and examined.

14,811A. (*Chairman*.) You are a solicitor practising in the city?—I practise at 122, Seymour Place, Bryanston Square.

14,812. I ought to have said the county of London, I suppose?—Yes.

14,813. Have you been admitted 30 years?—Yes.

14,814. For 25 years you have been in active practice, during which time you have had a very large experience of divorce cases?—Yes.

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14,815. In the court in London, and you also have had experience of the Married Women's Act, 1895, and the Licensing Act, 1902. Your experience has been principally in London?—Practically altogether.

14,816. Have you found out by experience the difficulties which affect poorer people in getting their cases heard?—Yes.

14,817. Will you tell us what your experience is?—The costs of a divorce are practically prohibitive to the working man, and almost so to the clerk and mechanic. The very lowest sum that a divorce can be conducted for is 30 guineas.

14,818. We had a gentleman yesterday who had conducted apparently some cases at 15 to 25 guineas?—He must have gone *in formâ pauperis*.

14,819. No, he said not?—He must have given his services practically. There are the court fees and counsel's fees.

14,820. They were simple cases, mostly where the parties were guilty and found living together and one witness proved it. Does it strike you as too low for that?—Yes.

14,821. Have you had a large number of that class of case?—Yes, I have had some *in formâ pauperis* cases. I do not want them but sometimes they are brought to you, and you have to do them.

14,822. Cases not *in formâ pauperis* would require how much?—I think the lowest I have done a case for is 25 guineas.

14,823. I am told the travelling expenses were not included in that, but those were London cases. The lowest you have known a case conducted for is, how much?—The lowest I have conducted a case for, not in an *in formâ pauperis* case, is 25 guineas, and I practically did that because I was asked to do it. There was little or no profit.

14,824. Was that done according to scale?—No, I agreed a fee. If you did a case according to scale you could not do it at that. It would work out a great deal more.

14,825. Mr. Musgrave told us the figure; what do you say? By scale?—I suppose 35*l.* or 40*l.*

14,826. Would 25*l.* include the witnesses' expenses?—No.

14,827. What do you say about contested cases?—If a case is contested and the husband has to find security for his wife's costs, he would have to be prepared to find 100*l.*, to include his own costs.

14,828. Is that as low as you think it can be done in a contested case?—Practically.

14,829. When there are both sides to provide for?—But there may be a solicitor on the other side who insists on security, which is often 30*l.* to 40*l.*, and your own case, if fought, you have to be particular about, and then there are the witnesses to see, and there is taking them to court and waiting day after day for the case to come on, and you may lose it and must be prepared for the costs of both sides.

14,830. Many of these points we have heard fully. You point out the only remedies. We know what they are. They are under the two Acts. I think we need not recapitulate that, but you point out that the effect of the 1895 Act is to give no relief to a poor person on the ground of adultery?—No.

14,831. They have no remedy except by coming to the High Court?—That is so.

14,832. With regard to *in formâ pauperis* cases what have you to say? We know the procedure and the amount they have to prove they are not worth, and the fact of getting an opinion before counsel. Is there any other observation you wish to make about it?—Yes, they are not cheap cases, although they are *in formâ pauperis* cases, if done through a solicitor. I have heard people who have gone to the court, I mean to Somerset House, but they do not get much assistance, and they have practically to go to a solicitor, and the result of the whole thing generally is that they do not go on with it, or they raise money to go on with it through a solicitor if they can.

14,833. Is that why so few cases are brought *in formâ pauperis*?—Yes.

14,834. Mr. Musgrave gave the figures, which were very few?—Yes.

14,835. That practically shows that it does not work?—No, it does not work.

14,836. With regard to applications for advice to you, have you had a large experience of people applying to you for advice as to what you think they should do?—Do you mean with regard to divorce?

14,837. Yes. I am referring to the next paragraph in your proof, on page two?—Frequently I am applied to by women, and sometimes men, to obtain for them separations on the ground of adultery, but I have to point out to them that they have no relief for that offence except proceedings in the divorce court, which of course is quite beyond their means. If enquiries were made, it would be ascertained that many women who seek for orders for separation have put up with a long period of cruelty, but decline to tolerate their life any longer when they have ascertained that another woman has usurped her place in her husband's affections.

14,838. The point is, those applications are frequently made to you for advice?—Yes.

14,839. Do you think that there is a real demand amongst the poor who cannot at present get the opportunity of bringing suits for divorce?—Yes, frequently I notice that magistrates have said, when poor people come before them, that they do not ask for a divorce and do not complain of their husband's adultery, but that is because they know it is no good. People have often asked me whether the magistrate will grant them a separation upon the ground of adultery, but I have had to point out to them that they cannot do so.

14,840. What is the result of the inability to obtain that relief?—Amongst the poor, in the case of the woman committing adultery, a man who finds his wife misconducting herself either has to condone her conduct or separate from her, taking his children. If the children are young, and no relatives near to look after them, a woman has to be engaged for that purpose with the almost inevitable result.

14,841. You mean improper intercourse?—Yes, he lives with her and she becomes his mistress. The only relief the man has is that the law does not compel him to keep an adulterous wife. In the case of the husband misconducting himself, the woman must either tolerate it, running the risk if he is leading a loose life of catching a venereal disease or she must leave him, in which event she would get no allowance, however flagrant his conduct may have been.

14,842. She cannot get it if she leaves?—If she leaves on the ground of his adultery she cannot go under the Married Women's Act for an allowance, because that only deals with cruelty and assault.

14,843. And neglect to maintain?—Yes, and desertion.

14,844. Do you think, as a matter of fact, that a relief of this character is more of a necessity amongst the poor than it is amongst those who are better off?—Yes, because richer people can afford to have their children and home looked after, but the poorer people cannot afford to do so.

14,845. With regard to cases where men and women have left each other, what have you found?—People who leave their partners on account of misconduct simply lead an irregular life, because they are not in a position to pay the heavy fees necessary to obtain a divorce.

14,846. Has that come before you in a practical way?—Yes, especially with men, with women sometimes, but not so much as with men.

14,847. Can you give us any idea how many cases you have taken through the court?—No.

14,848. Is the number very large?—Hundreds of them.

(Sir Lewis Dibdin.) Through what court?

14,849. (Chairman.) The Divorce Court?—A large number. When I said hundreds I rather thought you meant through the police court for separations.

14,850. No, in the court itself?—A very large number extending over 25 years.

14,851. Assuming that something should be done to meet this difficulty, what suggestion have you to make?—There are only two courts which need be

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discussed, courts of summary jurisdiction and the county court. With regard to the court of summary jurisdiction I do not think that is suited to try a divorce case, and certainly not a contested case for the following reasons:—(1) Either petitioner or respondent should have the right to demand a jury. A court of summary jurisdiction has no machinery for summoning a jury and no place (speaking for the London courts) to place them; (2) pleadings such as would be necessary in a divorce case are unknown in courts of summary jurisdiction, and these courts would have to be enlarged, and the staffs increased to cope with work which is quite foreign to what they are at present engaged on; (3) in London the work at summary jurisdiction courts is so heavy that they could not give up sufficient time to try a contested case of this nature without seriously dislocating the work. The mornings are devoted to criminal work, and the afternoons to work of a more or less civil nature. It would therefore be in the afternoon only that such cases could be tried, and then after the ordinary business had been disposed of. If a case is not concluded it is usually adjourned for a week. This would be, for many obvious reasons, extremely inconvenient, and undesirable in the case of a contested case with a jury; (4) petty sessional courts in the country are not, in my opinion, a proper tribunal to entrust so grave a responsibility besides the objections I have already stated, to summary jurisdiction courts.

14,852. Then you seem to think in the next paragraph that the best court is the county court?—Yes.

14,853. Will you give us the limitations which you suggest?—Yes.

14,854. May I take it that they are first as to means?—Yes.

14,855. Several are only details as to procedure, we will take them as read and they will appear on the shorthand notes, but will you mention what you think are important points as regards limitation?—(a) I do not think any person ought to bring a divorce case in the county court without first making an affidavit, and, if necessary, proving that the joint incomes of himself and wife, or wife and husband do not exceed 200*l.* a year, and that they are not worth more than 300*l.* after paying all their debts. (b) Then I think that special days ought to be set aside to try such cases. I heard his Honour Judge Ruegg say that there are certain courts where the work is over by eleven o'clock, and there you might fix half-past twelve, or take them in the afternoon.

14,856. Those hours of the day would really be a special day?—Yes. (*The following were taken as read:*) (c) the plaint and hearing fees ought not to exceed 3*l.* 3*s.* in all; (d) a petition should be filed as at present in the Divorce Court, setting out the charges the respondent has to answer, and the grounds on which relief is asked; (e) the respondent should file an answer 14 days before the hearing day, if he or she intends to defend, setting out grounds of defence; (f) the judge or registrar to have power to give leave at any time to file such answer on good cause shown, and hearing day to be extended if necessary; (g) either party to have the right to demand a jury, such jury to be in the nature of a special county court jury, such demand to be filed 14 days before the hearing day; (h) the usual notices and powers which are at present in force in county court proceedings to be available in the extended jurisdiction, and the county court rules in force for the time being to apply as far as applicable to cases of this nature; (i) place of trial: The court for the district where the parties last lived together as man and wife, or where any act or acts complained of are alleged to have been committed. Care must be taken that the petitioner does not choose a court for the purpose of making it impossible for the respondent to attend and defend; the court to have power to transfer the proceedings to another court if it is of opinion that it is impossible for the respondent to defend owing to the expense of bringing witnesses to the court chosen by the petitioner, and the respondent is thereby in danger of injustice being done to his or her case. The court, to have power to order payment of costs incurred by

such application for transfer; (j) if the petition is that of the husband, the registrar to have power, either on the personal oath of the respondent or her affidavit, that she has a *bonâ fide* defence, to order a sum not exceeding 10*l.* to be deposited for her defence, with power to the registrar to allow her a sum not exceeding that amount to be paid out to her solicitor for that purpose; (k) registrar to have power on a like affidavit as mentioned in paragraph (j) to allow wife alimony not exceeding 2*l.* a week pending hearing. If wife complains that payments are in arrear, case to be stayed till such alimony paid, and not to be tried whilst any payments are in arrear; (l) if, on case being stayed for non-payment of alimony, husband is in arrear for six weeks, case to be struck out, but husband not to be debarred from recommencing same on payment of all arrears up to the date of striking out such case; (m) appeal to the judge from registrar on all questions; (n) either party to be allowed to appeal from the verdict of the jury, or the findings of the judge. Such appeal to be direct to the Appeal Court as at present from the Divorce Court, and on the same grounds. Such appeal to be lodged within a month of the hearing of the case; (o) if the husband appeals he must deposit 5*l.* towards wife's costs of appeal. If the wife appeal, she not to have to find security for husband's costs, nor is husband to be liable to pay her costs unless she is successful; (p) solicitors and barristers to have equal rights of audience to conduct divorce cases in the county court; (q) if the judge or the jury find that the petitioner has made out his or her case, the county court judge to pronounce a decree nisi; (r) in the event of there being no appeal, or in the event of an appeal being dismissed, and when the case finally concluded all the papers to be transmitted to the Divorce Division of the High Court, and such court shall, on the application of either party, make such decree nisi absolute. No fees to be charged for the making of such decree.

14,857. Now will you go on to paragraph 2?—I had mentioned the question of the appeal you raised with the last witness, but I agree I do not anticipate there would be any appeals. I have never had a case appealed against, or been in one.

14,858. You agree with what I was saying?—Absolutely.

14,859. Do you think that would apply equally in the county court, or that there might be more readiness to appeal there?—I do not think so. I think when the case has been fought out they will take the decision.

14,860. One of the main reasons why there are no appeals is that nearly all cases are undefended?—So it would be in the county court.

14,861. If the decree is granted there is no appeal. If it is refused that is an extremely rare case?—An extremely rare case.

14,862. Because it is prepared?—It is not taken up till you have all your evidence ready. You do not advise the divorce until you know there is sufficient evidence to be able to prove it.

14,863. Is there any other special point you would like to mention beyond what you have actually written?—Excepting I say here I think the registrar ought to have power to give the wife an allowance pending the case being heard, and I do not think the case ought to be heard if the wife says any of that allowance is in arrear. Some of my remarks are founded on difficulties I have experienced in conducting cases under the Summary Jurisdiction Act, where wives say, "My husband is very much in arrear." Some magistrates make a useful rule and say, "I decline to hear this case until you have paid all the arrears."

14,864. How have they got the order?—The man has had to find the money. When a man comes to the court for a reduction of the order or variation, and he is much in arrear, that is the case I mean: not where the woman is asking for the order, but after the order has been made.

14,865. With regard to paragraph 2, what have you to say about separation orders generally?—I think separation orders by their very nature, especially to young people, are extremely unsatisfactory. Both parties bound to each other for life, and yet neither of

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them married, and the husband probably through whose misconduct the separation has been effected, ever on the look-out and anxious to catch his wife falling so that he may be released from paying the allowance he has been ordered to pay. Separation orders frequently lead to both sides entering into irregular unions.

14,866. Is that speaking from actual experience?—Yes. I have heard a man say, when an order is going to be made, "I don't mind: I will agree to such and such an order: I will watch: I will soon catch her tripping," and he allows the order to go, meaning to watch her and get it upset. If he is in arrear with his money the unhappy woman has nothing to do and is rather driven to seek somebody who will give her money for a purpose.

14,867. That is the remedy you propose broadly for this?—To allow them at once to go for a divorce.

14,868. Assuming the cause to be such as to enable one to be obtained?—Assuming what I will name later on, because note this, they get separated and can never go for a divorce, either of them. The husband has committed an offence, it may be desertion, and has an order made against him, and the wife commits an offence because he does not pay, and both are barred, and they are left tied for life.

14,869. But actually living totally different lives?—Yes.

14,870. If there was no dealing with this on the basis of divorce, you would not cut down the power to obtain separation?—If you do not enlarge the grounds of divorce I certainly would not cut down the man's or woman's powers to obtain separation. The grounds on which they can be obtained, to which I have already referred, testify to the fact that a person ought to be freed from having to live with another guilty of such conduct, but the grounds for which a separation can be granted ought also to be grounds on which a divorce can be obtained.

14,871. Do you think separation is a bad thing or not?—I think it is a very bad thing, certainly for young people.

14,872. We have had it suggested that orders might be made of a temporary character. What is your view about that?—My view is that directly people start separating nothing will bring them together later on—certainly not to the man later on.

14,873. We have had a good deal of evidence to show a very large percentage of these matters end in reconciliation?—They end in reconciliation because the man does not pay. Then the woman comes back and he promises to behave himself, and then he again knocks her about, and she leaves him, and again she often comes back. I will mention a case later on where I have applied for a third order; she did not go back for affection, but simply because it was her means of livelihood.

14,874. With regard to young people what do you say about them especially?—I think two young persons separated from each other sooner or later, and generally in the case of the man sooner, rather than later, contract other ties, and this state of things cannot be good for the community, and it is very seldom indeed that husbands and wives who have been separated come together again, but although it does sometimes happen that they do, I cannot recall an instance where it has been permanently successful. May I say, with regard to what has been suggested, that the judges should reconcile them, when the person brings a divorce they see their solicitor, and the solicitor, if he sees there is any chance, invariably advises—I always do—reconciliation if it can be brought about. If you are acting for the erring husband, if he cannot approach the wife you ask if she has any friends. Then they have to go in for the costs of the divorce, and if they have tried by themselves or their solicitors or friends to be reconciled, and spent all this money, a judge will not bring them permanently together. He will see them in a private room, but they will have an idea they are being coerced; although they will walk out and say they have made it up, there is no permanency in the thing.

14,875. You do not gather any good would be obtained?—None whatever.

14,876. Not if a judge should be entitled to see the parties?—It is a pressure which will not have a permanent result. The person who says "I am not going to agree" is put in an awkward position, if the judge has suggested it, if the case has to be tried by the same judge. He says, "I am not going to have a fair trial, because the judge thinks I ought to go back and therefore he will not try my case fairly."

14,877. You point out in the next paragraph that a woman has to leave her husband before applying for relief?—Yes, and that is a very hard thing. I know of cases where the house and home belong to the wife, or where she has a little business and lives there keeping her husband and family. Her husband has been persistently cruel to her, but it is impossible for her to leave, for she is afraid that whilst away her husband might sell or smash up her home, or, in the case of a small business, her absence would break up her small connection, and whilst away no money could be earned for her children's wants. Then the last ground of the Act, wilful neglect, is very seldom asked for.

14,878. It is practically useless?—Practically a dead letter.

14,879. What is your remedy for this particular point?—The one I have just named?

14,880. Yes?—That the wife ought to be allowed to take out her summons for maintenance without having to leave him. She could do so in the case of an assault.

14,881. You are not speaking of a separation order, but an order merely to get maintenance?—That is a separation order.

14,882. Not necessarily?—The order separates them.

14,883. That is a point of distinction which is not sufficiently borne in mind. An order can be made for maintenance without making an order that the parties should be permanently separated?—I have never known it done.

14,884. We know it is done by the statistics which show it, although it is a common form to fill it up as a complete order. What do you want a maintenance order for when a man deserts his wife? The object is to get money. The order is to get money, and if he comes back and maintains her, there is an end of the order?—That is so, but I think the order runs in a common form.

14,885. I agree, and it did extensively till I called attention to it in *Dodd v. Dodd*, but is there a necessity for it in maintenance cases?—No, there is no necessity. I know the case you refer to.

14,886. You agree to that?—Yes.

14,887. What have you to say on the question of habitual drunkenness?—A difficulty very often arises in having to prove that the person who is an habitual drunkard is a person who is at times dangerous to himself, herself or others, and is incapable of managing himself, herself, or his or her affairs, although London stipendiaries do not as a rule insist on a very strict interpretation of this definition. The expression "habitual drunkard" speaks for itself, and hardly requires to be defined.

14,888. It is defined at present by statute?—I point out that I do not think that definition is a good one.

14,889. Will you give us a suggestion?—I strongly object to definitions. I think the person who tries the case ought to know what "habitual drunkard" means from the evidence. Some habitual drunkards are not dangerous to themselves or others, and yet they are habitual drunkards. Some people who habitually drink, laugh, or joke and lie down and do not move. They cannot be said to be dangerous.

14,890. Would you give power for separation in those cases?—If always in that condition, always soaking, and bringing up his children badly.

14,891. However it is done, it seems enlarging the definition from what it is at present?—Yes, or having no definition and allowing it to define itself.

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14,892. That would be a large power open to all sorts of interpretation?—I think in practice "habitual drunkard" often defines itself.

14,893. You have already dealt with the next point. You find although the people come together they separate again?—Yes, and the fact that they come together does not show that the separation has been applied for hurriedly or without due consideration. The facts they have to prove before a magistrate to satisfy him—some are very strict—show they cannot have asked for it hurriedly.

14,894. Why do you say that statement does not reflect credit on the magistrates?—Why I say it does not reflect credit? There are those who say separation orders are applied for without due consideration, and that does not reflect credit on the magistrates who have tried the case. If you draw the deduction, because a person asks for separation and afterwards goes back, that separation ought not to have been granted, it reflects on the magistrate. Take persistent cruelty. She has to prove a case, and she gets a separation under the Act, as she ought to. If she chooses to come back and forgive that, it does not mean she hurriedly applied for the first order, but she is an extremely forgiving woman—and they are extremely forgiving. You would be astonished if you only knew or heard the tales of how much they have to put up with before they ask for the orders.

14,895. I am not sure I follow the reason of your paragraph, because you say—I will read the paragraph—"As to applications made by women for separations, I have seen it suggested that because the parties have been known to come together again these separations are applied for hurriedly and without due consideration. This statement does not reflect credit on the magistrates who try these cases, as they ought to be, and presumably are, satisfied that a proper case is made out before they make an order. I do not share the opinion that these applications are hurriedly made and afterwards repented of." Do you mean this, that the magistrates exercise that jurisdiction properly and fairly?—Yes.

14,896. But a woman is so forgiving that she relents?—Yes, that is exactly what I mean.

14,897. You have applied over and over again for a separation, and once three times?—Yes, and got it in each case.

14,898. That is to say renewed acts each time?—Yes, a woman has gone back to her husband, and there have been renewed acts of cruelty. She has come back and got the order again on three occasions.

14,899. Have you any remedy to suggest for this?—I think when a man is habitually cruel to his wife and shows he is nothing more or less than a brute, she ought to be able to divorce him for it; she ought not to be tied to him for life.

14,900. They come back, according to your view, partly through this forgiving nature which you have indicated, and also by the strain of having to support a family without enough to do it?—Yes. I think it is hard, when a woman has had an order made, she has to wait a month before she can enforce it; that means she has to beg from her friends, or practically starve.

14,901. I do not know whether the next point is one you want to amplify at all, about the division of the homes, it being more difficult to keep up two than one?—I only show what an unfortunate position the woman is in under the separation, because the orders run from 8s. to 10s. or 12s. a week, as a rule.

14,902. They cannot live on it?—It is hard for a woman with three or four children, when she has been accustomed to a husband earning 30s.

14,903. Would it be satisfactory that those cases should be divorce cases? What would be her position then?—If she is divorced she can marry again if she gets the opportunity, or she is a freer woman to go about and get work, because, unless they are separated by the magistrate you often find—I have known women who have got into a situation, and the man goes to the house and creates a nuisance, and they have had to discharge her because he says: "I have a right to be where my wife is." If she was a free woman he would not be able to say he had such rights.

14,904. The next part of your proof deals with amendments in the law relating to divorce as it stands at present. What do you say upon that point?—I think the law with regard to the parties' right where cruelty is alleged as one of the matrimonial offences should be considerably enlarged. The courts have hitherto insisted that the cruelty must be such as to cause the complaining party some actual loss of physical health, and have hitherto required evidence, supported by corroboration of acts of physical violence and shown great reluctance to entertain acts of cruelty which in my opinion are just as much acts of cruelty as if the defendant resorted to acts of physical violence. I instance a case I know of in my office where a man declines to occupy the same room as his wife, declines to speak to or recognise her, and insists on all communications being made by letter. The house is used by him for the purpose of his practice, and for sleeping accommodation. The wife is by his conduct greatly humiliated, and is in a worse position than her own servants. She ought not to be compelled to prove by medical evidence that her health has suffered, and such conduct is so calculated, cruel and lasting as to be worse than blows, and yet it would not be considered legal cruelty unless medical evidence could show that her health had been impaired. There are many other cases I know of in which the wife has been subjected to intolerable conduct by the husband, who whilst refraining from any active acts of cruelty, has by his conduct to his wife rendered her life miserable in the extreme.

14,905. You think that the definition of "cruelty" should be extended?—Enlarged.

14,906. Have you formed a definite notion of how it should be stated?—No, I am not prepared to give you a definition of "cruelty."

14,907. You think also owing to the difficulty of proof of cruelty in private relations, because there can be no corroboration?—Yes.

14,908. Is not that dangerous?—Yes, but you would have to leave it to the judge to be careful in the case he is trying; there are cases where a woman is evidently stating what is true, but the corroboration is very weak.

14,909. There is no hard and fast rule now?—No, but some judges are more particular than others in the corroboration they insist upon.

14,910. You must satisfy any tribunal that the story is true. It is a practical difficulty, not a theoretical one?—Yes.

14,911. The next point is about staying proceedings until costs have been provided. Will you tell us about that? That is an important matter of practice?—Another serious question frequently crops up in the course of the proceedings, viz., the wife's right to an order staying the husband's petition until her costs have been provided for. This is an extremely difficult question to deal with, as of course it is very essential that an innocent wife should have the means provided her by her husband of defending in cases where she has no separate estate of her own, and her husband holds the purse. On the other hand, I have known cases where a wife has from the first had no chance whatever of successfully defending a suit, and although I believe the registrars have power to call upon a solicitor to make an affidavit that he has reasonable grounds for believing that his client has a *prima facie* defence to the charge, yet I understand his power is seldom exercised, with the result that in a great number of cases the husband has been put to unnecessary expense in what turns out to be an undefended case, or his petition has been stayed permanently with the result that there is a strong inducement to the husband, who has hitherto led a respectable life, to lapse into immorality. An instance of this came before me a little while ago. In this case I acted for the husband, a highly respectable guard on one of our big railways. I commenced proceedings against his wife claiming a dissolution by reason of her adultery, and the case proceeded and was set down for trial when the wife's solicitor got the usual order for payment of the amount then due and security. Shortly after this it was ascertained that the wife was

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living in open adultery with the co-respondent, passing under his name, and an application was made to the late Sir Francis Jeune for an order, supported by an affidavit of the facts that notwithstanding the order to stay the suit might be proceeded with. The petitioner proved conclusively: *First*, that it was quite impossible for him to pay the costs which had already incurred, and *Secondly*, that the wife was then living in open adultery, and that there was no possible defence to the suit. Sir Francis Jeune expressed his great regret at being unable to give the petitioner any relief so long as the costs ordered to be paid were not paid, with the result that this man has to this day been separated from his wife, and has been unable to get a divorce, which he was fully entitled to.

14,912. That is a long while ago. I know in my time I laid it down that the registrar should require satisfactory proof that there was a good defence. You cannot go further than that?—A solicitor might make that affidavit, and there may be a real defence, but then the woman afterwards lives in open adultery with the man, and when the order has been made it cannot be upset, as I understand from the rule.

14,913. There ought to be no difficulty in rescinding it on proof of those facts. I know I indicated how it might be done by the registrar. Your point is that unfounded defences should not put the burden of providing for the costs on the petitioner. If there was satisfactory evidence before the judge that there was a real case to defend it would be a different case?—Yes. Supposing an order has been made, and it is shown afterwards there is no defence, that order ought to be removed and the man ought to be able to get his divorce.

14,914. That shows litigation should be honestly conducted where security is required?—Yes.

14,915. What is your next point, please?—Another important question is as to whether the fact that a petitioner has been guilty of a single act of misconduct should preclude him from ever obtaining relief. In my opinion the court ought to have a very much wider discretion, and should exercise it more freely than has hitherto been the case. It is only in very exceptional circumstances that the court will grant any relief in cases of this description, and this notwithstanding the misconduct may have been committed many years previously, and been fully atoned for. The consequences are that both parties can only be separated permanently. The woman cannot get an allowance from her husband, nor can the husband free himself from the marital tie. The result is that such persons conceal material facts from their solicitors, in the hopes that their past misconduct will not be discovered, and after decree nisi the successful party is liable to be blackmailed by any person who has knowledge of the previous misconduct and who might threaten to communicate with the King's Proctor. I agree that such discretion should be cautiously used, but where the interests of the children are sufficiently protected, I think it is a blot upon our system that because one or other party, who has otherwise lived an orderly life, had at some time or other committed misconduct, he or she should be for ever debarred from obtaining a dissolution of the marriage tie.

14,916. That means that those cases which the judges decided, not long after the Act was instituted, put too great a restriction on their discretion?—Yes.

14,917. You would allow, although a petitioner was in fault, some discretion should be exercised by the judges as to whether it was considered desirable that should be a complete bar to the suit?—Yes.

14,918. With regard to amendments in the law, you have specified your views about that. Will you tell us what they are?—I think that either party should be entitled to a divorce if he or she can prove that the other has been guilty of adultery.

14,919. In that respect you place the sexes on a footing of equality?—Yes, I would, but I am bound to say I do not think the woman ought to exercise it in the same way as the man. I should never advise a woman for one act of misconduct on the part of her husband to divorce him. I do not see how you can get

out of putting them on an equality, although I do not think it ought to be equally used.

14,920. You mean that it would be discretionary?—The woman must have the right, because I cannot see how you can debar her. A woman ought to be able to divorce her husband for adultery, but I think it ought to be more or less persistent.

14,921. Before she has the right?—No. I do not think she ought to use her right.

14,922. That is another matter?—Yes.

14,923. What are the other causes?—Persistent cruelty, desertion for 12 months and upwards, habitual drunkenness, incurable lunacy, or if either party is sentenced to a term of imprisonment for three years or upwards.

14,924. No matter what class of offence they have committed?—Yes.

14,925. You have already dealt with what you consider are the evils of separation orders. You suggest that the grounds of separation should be grounds of divorce?—Yes.

14,926. You think they ought to be exactly the same?—I put them on an equal footing.

14,927. You think a 12 months' desertion is quite long enough?—Quite. It does not require two years to make up their minds whether they will live together again.

14,928. What are the evils you find at present through there being no divorce for desertion?—I have been many times consulted by persons whose husbands or wives have left them, all trace has been lost of the deserting party, and the other person wishes to marry again. He or she can do so if the deserting party has not been heard of for over seven years, but though this would absolve him or her from a prosecution and conviction for bigamy if the deserting party should afterwards reappear, the marriage is void, and the children born of it are bastards. Again, I may instance a case in my office where a man had married a woman who had not heard of her husband for more than seven years. The man afterwards deserted her and his family by her. She summoned him for desertion, and he called on her to prove that her first husband was dead at the time of marriage. She failed to do so, and her summons was dismissed. She appealed and failed. Could she have obtained a divorce for her husband's desertion, she would not have been placed in this cruel position.

14,929. You do not, I understand, confine your case of desertion to cases where a court might presume that the husband was dead?—No. If a woman or a man deserts for 12 months they ought to be entitled to go to the court.

14,930. You do not confine it to where they might get a presumption of death?—No. I know of an instance where a lady of good standing left her husband unquestionably with another man although there was not sufficient legal evidence to prove it. She went abroad, and although the husband had tidings of her from time to time showing that she was still alive, yet so skilfully had she arranged matters that it has been impossible for him to obtain the necessary evidence for a divorce, and for many years he has had to lead a bachelor's life and unable to relieve himself of the tie of being married to a woman who is living in adultery abroad.

14,931. To what extent does your experience lead you to know of cases where the party has deliberately deserted and gone to the colonies or to America?—I have known them say their husbands have gone to Canada; they do not know whether they are alive or dead, and they ask, can they marry again?

14,932. Is that a frequent case or not?—I will not say frequent, but certainly I have been asked that several times. I have known a case where a man or a woman—more than one case—has gone to another part of England and they have never been heard of again, and the woman wants to know what is her position; can she marry again, and is she a married woman or not?

14,933. Some witnesses have suggested that is not a sufficient repudiation of the marriage tie to allow of the court interfering. You do not take that view?

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—No. If a man does not contribute towards her support I do not see why she should be tied to him and not get somebody who will keep her.

14,934. Among the working classes you are speaking about, is this necessity for maintenance by the husband of a woman a very serious matter? You suggest if a woman like that is deserted she should be able to obtain another partner. Do you regard that as an important matter among that class of people in the way of maintaining and keeping a woman?—Yes. It is one of their principal means of livelihood, when a woman is married and has a child or two; she may have married young and has no trade to her hand, and she knows nothing she can turn to.

14,935. She has lost her trade?—If she had one. Some marry at 18 or 19 and have no trade, and perhaps their husbands will live with them for seven or eight years.

14,936. She can do nothing except keeping the house?—Or they have just gone into a shop, and the husband marries them out of the shop.

14,937. This case is more weighty from that point of view with the people that want support, than it is with the better classes?—Much more so, because they have money of their own, or friends who will look after them, but these people have not.

14,938. Do you mean a woman who has no trade has practically nothing to look to except to re-marry?—Nothing unless they go to work.

14,939. Cannot she go to service?—Sometimes, but it is a very difficult thing for a woman. Take the case of a woman who has been married and has three or four children, and who wants to go into any service. The lady wants to know what her character is. The fact that she has children is a bar, and she will want to see how they get on. She does not know her husband may not turn up and make a scene.

14,940. Do you find that leads to taking an irregular partner, or that they maintain their virtue?—In many cases they take an irregular partner.

14,941. As to the maintenance of children you have some observation to make, I think?—That is in granting a divorce for habitual drunkenness and incurable lunacy.

14,942. I mean a part of your proof before that?—When the wife is the petitioner the court should have power to order the husband to provide for the maintenance of his children until they are 21, or they may marry.

14,943. They have that power now?—In the county court divorce, until they are 16.

14,944. You mean county court separation; there is no county court divorce?—No, but in the event of county court divorce.

14,945. You think it should be extended?—Yes; until they are 16, with power to the court to vary or alter such order, such county court order to be enforceable in a court of summary jurisdiction in the same way as orders are enforced under the Married Women's Act, 1895.

14,946. They now have power, under the separation order, to deal with the children up to 16 years of age?—Yes. I say if you allow the county court divorce jurisdiction the court ought to have power to order the husband to keep the children up to 16, and those orders to be enforceable, not in the county court but in a summary jurisdiction court. Anybody who knows about enforcing orders in the county court knows practically you cannot do it. You get no orders. I could give you instances of that if you wished. In the summary jurisdiction court a woman will come with an order and say "My husband is in arrear," and they say the summons will be returnable in a week. Then when the summons comes on the man is asked if he admits the arrears, and if he does, he is asked "Have you the money, or any part of it," and he says "No, I cannot pay." Then the magistrate says: "Very well, you go to goal," and he is taken down, and the friend at the back of the court comes and pays what is necessary, frequently.

14,947. There are no such powers in the county court?—No. In the county court if a woman had to apply there for an order, instead of getting the money

in six weeks time from the application, as she would in the police court, she would have first of all to get a summons, which would be returnable in about five weeks. If an order to pay forthwith is made, that would give the husband another 14 days. If he then did not pay and had no goods, a judgment summons would have to be taken out which would be returnable in about a month or five weeks. Then comes the difficulty of serving it, because it has to be personally served and, in the first instance, to be served by an officer from the court. Frequently those men make a report that they cannot find the man. Only about one in every two of these summonses is served, and should the officer of the court fail to serve it, a notice is sent from the court about a week before the hearing day that the summons has not been served. The judgment summons would then have to be re-issued, and another hearing day fixed, for about a month later, and in the end a committal order might perhaps be made. It is, however, extremely difficult to get committal orders in the county court, as some judges are very averse to committing a man to gaol. This practice would take between three and four months, before the woman gets the first order paid, and in the meantime she has to keep herself, and these arrears are running on.

14,948. The point is, that for the maintenance of the woman and the children there is some summary remedy needed?—Absolutely, which is enforceable under the Summary Jurisdiction Act.

14,949. You have a point about habitual drunkenness, I think?—Yes. I suggest that in granting a divorce for habitual drunkenness and incurable lunacy the court should have power, in the event of the petitioner being the husband and the wife having no separate means, to order him to allow his divorced wife, whilst chaste and until death or re-marriage, some small allowance to keep her from being driven to earn her living by immorality, the frequent end of drunken women when left to themselves, or in the case of incurable lunacy to prevent the wife being chargeable on the rates.

14,950. You propose also to shorten the time of the decree being made absolute?—Yes. I should make the decree absolute, subject to the right of appeal, and directly the time for appealing is past the decree automatically ought to be made absolute without fees. I do not agree with six months after the decree nisi.

14,951. Why, not?—I do not see the object of it.

14,952. The object is to allow time for the King's Proctor to intervene?—Yes, I will deal with that later on.

14,953. You propose to allow the party to apply to either court?—I should allow a woman the option of either applying to a police magistrate for a separation on the grounds already open to her, to which ought to be added adultery—I think the Summary Jurisdiction Act ought to include adultery as being one of the grounds upon which the magistrate can grant separation—or to the county court for a divorce on the ground which I have given. The reason I suggest she should be allowed this choice is so as to meet cases I have known where a woman of, say, over 50, who has been married 20 or 30 years, has to seek protection from the court. Cases are heard where a woman has tolerated her husband's cruelty and drunkenness for a long period for her children's sake, but when her children are grown up, and she is getting older and unable to tolerate her husband's conduct any more, she asks the assistance of the court to free her from further unhappiness. To such a woman divorce is of little use, she is too old to marry again, and too old and feeble to earn her own livelihood. The husband would most probably welcome a divorce, but as what she wants is relief, and an allowance upon which to live, she should be given the choice of obtaining such relief and an allowance.

14,954. Now you come to the point with regard to the King's Proctor?—Yes. I would entirely dispense with the King's Proctor, whose office is an extremely mischievous one. He accomplishes no good object. His only work is to endeavour to find out that the successful party to a suit has been guilty of a matrimonial offence, in order to permanently prevent

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the separation of two people who, by the very nature of what has been proved, can never live together again, and who, by his intervention, are driven to lead irregular lives. I know of more than one instance of the very greatest cruelty caused by his interference, whereby in one case he prevented a woman tied to an unmitigated scoundrel from forming an honourable union with a man of good birth, her husband against whom she had obtained a decree nisi, being a most worthless blackguard, and to this rascal this woman is tied for life by the action of the King's Proctor.

14,955. I suppose that was because of some misconduct on her part?—That was so, but she was married to a scoundrel who did not mind any misconduct by her so long as she kept him. There was another man in this case, and afterwards they simply lived together. The King's Proctor interfered, they could not marry, and they lived together.

14,956. Your point is, that the intervention produced the immorality of the petitioner with someone else?—Yes, who was quite prepared to marry her and introduce her to his family, and bring her up honourably and properly.

14,957. That amounts to saying that there should be no recrimination in cases. We will assume that the defendant does not put forward any counter charge; the King's Proctor could not put it forward either?—No, but there may be recrimination by the parties. If they choose to recriminate it is open to them, but I do not think the State should employ a person like the King's Proctor to conduct recriminations which the parties do not conduct for themselves.

14,958. Would you abolish the King's Proctor's intervention in cases of collusion?—Certainly.

14,959. So that the parties could agree as much as they pleased?—Yes, it must come to that, I think. If two parties have agreed and do not intend to live together again I do not see why you should force them to do it, if they say "We cannot tolerate each other."

14,960. That would logically lead to divorce at the will of the parties without any of these causes you have required?—It does not follow that parties are always willing. In the causes I have named, habitual drunkenness, very often a man fights it and says he is not an habitual drunkard, or not cruel.

14,961. What is the necessity for satisfying any causes if the parties by agreement can separate and dissolve the marriage?—If they agree to separate, but I am taking the case where one party will not agree, and then you specify what grounds he can go on.

14,962. Would you be in favour of absolute freedom of divorce by mutual consent?—Of course one would have to consider the children. So long as the children are looked after I should not be opposed to it. I do not think you would get so many of them as people fear.

14,963. There are a good many writers who have maintained that view, and you seem inclined to adopt it?—I have not read them. That is my idea.

14,964. There is a whole library on the subject?—I daresay.

14,965. Where there is no mutuality you put in these causes?—Yes. I am not certain I would not go so far as to say that if people are not tied up so tightly they would manage to hit it off much better together.

14,966. That is what some people maintain?—The very fact they cannot separate makes these difficulties that they now have to complain about. The looser the bann, very often, the tighter it is, if I may use an expression which is contradictory.

14,967. Would you advocate the adoption of that by this Commission?—To make a looser bann?

14,968. To make these marriages soluble by mutual consent, and where there was no mutual consent, to put down causes on which one could act?—I do not know that I would go as far as that.

14,969. How far would you go?—I should say if two people choose by mutual consent to want to get a divorce, although I do not legislate it—they are always open to be prosecuted for conspiracy to defeat the ends of justice—I should leave it to the criminal law of the land without the intervention of the King's Proctor.

14,970. I do not follow that?—Supposing two people conspired to defeat the ends of justice, and you say those reasons are the only reasons to get a divorce, and they choose to go beyond and say "We will arrange to desert in order to do it," I think you may say that they are not properly using the grounds for divorce.

14,971. That is departing from what I gather you suggested before, because in that case there would be ground for divorce only on certain grounds. I rather understood you to say if two parties agreed entirely to separate that they should be allowed to do so?—Subject to the question of the children.

14,972. That is not bringing it before any criminal court?—No. If you did away with the King's Proctor there are other grounds open to them if they choose to put them into force. You might bring them to book if it is considered necessary to do so.

14,973. Your view is that the King's Proctor serves no useful purpose?—Absolutely.

14,974. Will you proceed with what you have to say about it?—I say that the King's Proctor's attentions are generally directed to the cases of poor litigants, and seldom does he endeavour to prevent a decree nisi being made absolute when the parties are of good social position or possessed of means, and able thereby to defend themselves against his allegations. Until a recent decision he was practically never condemned in costs even although unsuccessful, and when a humble litigant has perhaps raised every penny he can to procure his divorce he is not in a position to go to any expense to resist a King's Proctor's intervention, however unfounded, and in one recent case a petitioner who had to fight a King's Proctor's intervention, although successful, was completely beggared by the ruinous expense he was put to in defending himself against the King's Proctor's unfounded charges. The King's Proctor serves no useful office, as it cannot be suggested that his attempts to preserve the matrimonial tie between two persons whose differences are wholly irreconcilable serve any good purpose. The sum total of his success is the propagation of irregular unions, adultery and prostitution.

14,975. Your view is practically that wherever the petitioner is guilty of anything it is no use interfering. It leads to as much guilt on one side as on the other?—Wherever two people have gone to the Divorce Court for a divorce, say it is undefended, it is no good interfering by the King's Proctor, because he will not bring them together again. He does nothing. He simply prevents them marrying again if he can find out enough against the other party.

14,976. You think there is no advantage in that?—I am certain there is no advantage, and there is a great deal of disadvantage.

14,977. Might I suggest this for your consideration: in the individual case it might be of no advantage, but may it not have a very great advantage in making other people behave properly?—If they think the King's Proctor can intervene?

14,978. Yes?—I do not think so, because amongst the richer people if a person wishes to misbehave he has only got to go abroad. The King's Proctor does not go abroad to look for him. Amongst the rich there are plenty of cases where it seems obvious on the face of them that there has been collusion. You never hear of interference in those cases; it is only in poor cases.

14,979. You mean it does not meet the rich case?—I think he is generally put on, in the poorer classes, by somebody hearing of a divorce; some neighbour writes an anonymous letter. Amongst the poorer classes they are very fond of interfering with each other's business, and they put the King's Proctor on and there is any amount of tittle tattle going on. You do not find that amongst the richer classes. There is very little enquiry made, and the thing goes through.

14,980. Do you mean the richer class can conceal their own misconduct much more easily?—Yes, and there are not the people interested to put the King's Proctor on the track, so that it does not affect them.

14,981. So you mean this intervention has no deterrent effect amongst the well-to-do?—No. It is

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only a question with them that they must not be found out. It has no deterrent effect on them.

14,982. I can conceive your view where two parties are both so guilty that they can never live together. That is intelligible. It is no use trying to compel them to do so and stop the divorce suit. The point I am endeavouring to put is, will it not have the effect of making others, who may fear that, behave properly in case they should have a suit against the other party?—I do not think so.

14,983. That finishes your proof?—There is one point; may I mention about the publication of reports of divorce cases.

14,984. I do not think I have asked you upon that?—I have formulated these lines on that subject. My view is that it is in the interests of the public that divorce cases should be published so long as unnecessary and filthy details are excluded. I have on more than one occasion, not in divorce but in other cases, had very valuable information supplied to me owing to the publication of cases in the papers, both as regards witnesses and other parties.

14,985. Do not you think that the names of the parties in the charge would be sufficient?—No. Supposing a case is going on and lasting, and the witnesses are called, I think it is important that those witnesses' names should be put down, and their addresses, so that anybody reading the case may come up and give you information about that, saying "I know all about them." You would get important information.

14,986. I follow that point. Do you regard it as good for the country generally that the details should be published?—No. What I call filthy and unnecessary details ought not to be published, but the salient features of the case I think ought to be.

14,987. (Mr. Brierley.) I understand even assuming the county courts were given jurisdiction as you propose, you would still leave the police courts with their present power?—Certainly.

14,988. That you consider necessary?—Yes, because it is so summary and quick.

14,989. There are a very large number of people who also would find it very difficult to find the small fees necessary for applying to the county court?—Yes. I have detailed the scale of fees.

14,990. Are you aware that a large number of persons apply under the Summary Jurisdiction Act who cannot even supply the sum of 2s. or 3s., and free summonses have to be granted?—Speaking for London, that is not often the case.

14,991. Your experience with regard to the effect of separation orders seems rather different from that of some witnesses we have had. You say the parties when separated seldom come together again in your experience?—No, not permanently.

14,992. We have had evidence to the effect that in the majority of cases they do?—They make the experiment again.

14,993. Are not the number of cases where separation orders are applied for more than once by the same party rather rare?—Again I am speaking for London. Some magistrates will set their faces against it. I know one magistrate who says, "I have granted one: I will not grant another. If you have chosen 'to go back you will have to live with your husband.'"

14,994. I suggest the fact of them being rare shows that in a great many cases parties come together again and it means that they stay together?—I cannot say I have experienced that. You do not always follow them.

14,995. Are you speaking of the cases you have had?—Yes, which have come to my knowledge.

14,996. I suppose the poorer classes do not have the benefit of your advice?—No. Of course, a case in the police court means a fee of two or three guineas.

14,997. A large number of the parties who apply for separation orders cannot find two or three guineas?—Are you not more referring to the country?

14,998. My experience does not lie in London, I admit. With regard to young and newly-married people, is it your opinion that sometimes a separation

order has the effect of bringing about a better state of things?—No, I do not think so.

14,999. That the parties come together again and behave better in the future. They get the give-and-take that is necessary in married life, and sometimes a short separation has the result of bringing them together again?—I always think separation is very bad altogether. If a man is separated he at once begins forming another attachment.

15,000. It has been suggested in cases, especially that sort of case, that the separation order should be made for a time, say six months?—I am against that. It is now for a time; they can come together in a minute.

15,001. I understand you do not attach much importance to the attempt of the court to reconcile them, on the ground that they have consulted a solicitor?—And their friends.

15,002. Consulting a solicitor occurs in a very small proportion of the total number of cases?—Yes.

15,003. The effect of giving the temporary order would give the court, at least for what it is worth, the opportunity of attempting to reconcile these people?—The court does now.

15,004. Who are in many cases quite young?—The court does now.

15,005. It is possible in a case of real cruelty it may be necessary to separate the parties, for a time, at all events?—Yes, but my opinion is that these men who are cruel are cruel by nature.

15,006. Do you think so?—I am afraid so.

15,007. In all cases?—I think when a man has been persistently cruel, knocking his wife in the stomach even when in the family way, and blacking her eyes, a man like that is cruel by nature.

15,008. Those are extreme instances?—I am afraid those are rather frequent; lots of women put up with it without complaining.

15,009. You see no advantage in the temporary order?—No.

15,010. (Lord Guthrie.) You said in your experience in practice you find women uncommonly forgiving?—Yes.

15,011. Does that apply to women of all classes of society?—Yes, but I am talking particularly, of course, of the people who go before the magistrate for separation.

15,012. It is a general observation?—Yes.

15,013. A question has been raised as to whether a wife should be entitled to get a divorce for a single act of adultery on her husband's part. Have you known any case where any such proposal has been suggested by a woman?—No.

15,014. I have divorced a good many hundred people and have never known one?—No.

15,015. You will find if the husband is moderately good they will overlook to an extraordinary extent infidelity on his part?—A great deal.

15,016. Would you say the same, apart from adultery, in cases of cruelty also?—That they overlook a lot?

15,017. Yes?—An enormous amount.

15,018. And drunkenness?—Yes.

15,019. You would not expect, supposing the grounds of divorce were extended, there would be any great rush in the case of wives to get divorce from their husbands?—I do not think there would be.

15,020. I suppose that there are three very strong reasons to prevent any such thing, the sentimental reason, the pecuniary reason, and the element of social position?—Yes.

15,021. All acting as very strong deterrents against divorce on the part of the wife against the husband?—Yes, and that her position is always difficult to explain afterwards.

15,022. The social question?—Yes.

15,023. And, of course, if there are children, the question of the children?—Yes.

15,024. That is the fourth element?—That is a very strong one. Many people are kept together, not by affection, but by the children. That is the only binding tie.

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15,025. All those four questions are very powerful factors?—Yes, and the allowance of the husband.

15,026. That is the pecuniary question. You were asked about desertion. I suppose some cases would be met by an alteration of the Presumption of Life Act, so that under the Act you should not merely kill the husband as the owner of property, but also as a husband and father?—Kill him?

15,027. Yes. That would meet a considerable number of cases if the seven years was held to entitle the wife to marry again on the ground that her husband was presumed dead?—Seven years is a very long time; much too long a time.

15,028. There would still remain the cases where, for instance, the husband has intimated that he has done with the wife and her children for life, and has shown by a considerable period that he means it?—Quite so.

15,029. Do you not think 12 months is too short for that valuable kind of evidence showing permanence of his resolution?—No.

15,030. We have four years in Scotland. You think that too long?—Yes. I think if a man says that and goes straight away, the chances are that he goes with another woman, who does not let him leave her in a hurry if she gets him like that, and the wife does not want to take back again a man who has been living with another woman for 12 months. In 12 months she will have served her papers saying, "You have deserted me," if his answer is "I have not," he comes back.

15,031. There would require to be a period to show what I have suggested was not a mere collusion between them?—Twelve months, I think, is long enough. That is a long time.

15,032. In regard to what you said about the King's Proctor, you do not suggest that there should not be some means, either through the judge, or otherwise, by being very careful in the matter, to prevent people manufacturing a false case alleging adultery where there was no adultery. There must be some means of stopping that?—That would have to be sworn to, and then there is perjury if it did not exist.

15,033. You would leave it to the criminal law?—Yes.

15,034. And the judge being careful to see nothing of the kind occurred?—Yes.

15,035. I suppose also to the professional man who represented the plaintiff?—Quite.

15,036. Is it not very important to have solicitors and counsel who feel a responsibility to the court to prevent any such case in their knowledge?—Most solicitors and counsel who are in active practice have that feeling, and the judges and magistrates know pretty well who they are dealing with.

15,037. One effect of employing solicitors and counsel is that it prevents a great many false cases coming to the court?—Yes.

15,038. Do you not think it important that in all divorce proceedings both counsel and agents should be employed?—I do not agree about counsel, because you at once are adding up the costs, and I think solicitors are quite as capable to conduct these divorce cases in the county court.

15,039. Is not the solicitor, from his relations with the client and from the prospect of future employment, in a position of greater temptation than a counsel who only hears of it the day before?—That is the worst of it. Sometimes they hear of it the day before and do not know their cases so well.

15,040. Is he not in a more independent position to do his duty? He is not exposed to the same temptation as the solicitor?—I have not heard of that temptation amongst this class. There is no future work to be got. You mention that, but putting it at its worst I do not see their temptation. He is soon found out, and he is struck off the rolls.

15,041. In regard to publication you said you had known cases, not divorce, where the publication in the papers had led to witnesses turning up?—Yes.

15,042. In all your experience you have never known that in a divorce case?—No.

15,043. (*The Archbishop of York.*) You attributed the fact of persons not availing themselves of the permission to sue *in forma pauperis* in the High Court to this that those who did received very little assistance?—That is what I have understood from them.

15,044. Do you think there will be the same objection if the court were able to provide more adequate assistance to poorer suitors?—They will all have to go down to Somerset House. It is a long way for those people to trudge down, and they want a lot of assistance in their cases. It takes a long time to get the facts out of them.

15,045. Are you aware of the system which obtains in the High Court of Justice in Scotland?—No. I have had enough to do to get up the English system.

15,046. Supposing assistance could be more real and satisfactory, the hesitation of litigants to avail themselves of the right to sue *in forma pauperis* might be overcome?—Yes, it might. I think they very much prefer to go to their own solicitor and have their work got up in that way.

15,047. You regard it as a right on the part of any litigant before any court that he should have a jury?—I think one or other of the parties ought to have the right to demand a jury. I would go further: I think judges would be grateful, if it is a hardly fought case, for the jury to say who is telling the truth. You may come before judges who have strong feelings about divorce, and then it would be difficult, whatever you proved, to get your case.

15,048. That would apply to county courts as well?—I was dealing with county courts.

15,049. Do you think a county court jury is a body in every way fitted?—No. I have suggested that there ought to be a special county court jury, drawn from a little better class.

15,050. I did not hear you suggest that?—No, it was not read, because my Lord said it should be taken as read. That is one of my suggestions, a special county court jury for these cases.

15,051. You said, both in examination-in-chief and in reply to Lord Guthrie, that you attach very great importance to the fact that solicitors will very rarely recommend a case unless they are satisfied that the evidence is good. That was one of the reasons you thought why appeals were so infrequent in divorce cases?—Yes. A person will say: "Here is my case. Have I sufficient to go for a divorce?" You say yes or no, or "You must get further evidence." I had a case the other day where undoubtedly the man had committed himself. I had to say, "You have not sufficient evidence; you must get further evidence." You satisfy yourself there is a good case, and then you start the action.

15,052. That is what happens when they apply to you: but if jurisdiction were extended all over the country to every county court town, would the solicitors there have the experience to which you rightly attach great value?—Straight off perhaps they would not have the experience, but they would soon obtain it.

15,053. They would in the event of divorce becoming common, not otherwise?—There are certain solicitors practising in the county court who do the advocacy. If you go to a county town, to a big conveyancing firm with a case going to be conducted in the county court, they will probably say they do not do that work, and hand it to somebody else to do it, or give it to somebody else altogether.

15,054. Does it not ever happen in the county court towns that certain solicitors are willing to take up cases on speculation?—There is no speculation in divorce, because there are no costs to be got, in these poorer cases in the county court. The speculation cases you are talking about apply to workmen's compensation and employers' liability cases.

15,055. If a solicitor has not had the great experience you have had, and is anxious to obtain practice of a particular kind, would there be the same security you attach so much importance to now?—Yes, because he would not be mixed up with a lot of losing cases; that would not do him very much good.

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[Continued.]

15,056. You said your experience of the present operation of separation orders was, that husbands were eagerly on the look-out to catch their wives falling, so as to have a bar against the payment of maintenance?—Yes.

15,057. But if husbands are eagerly on the look-out to catch their wives falling, is it not singular so few instances are alleged in which they have succeeded?—I think I said that in regard to something particular.

15,058. I put the question, because we have had very strong evidence indeed that the number of instances in which that defence is successfully alleged is excessively small?—I have had a very large experience, and it has been in an extremely small number of cases that I have been asked to allege it.

15,059. Would not that have an important bearing on the statement that separation tends almost necessarily to immorality?—Immorality on the part of the man.

15,060. Not on the part of the wife?—Not so much.

15,061. You would largely exclude what you said about the evil of separation from the cases of women?—Yes.

On the part of the man I say certainly they generally lead to irregular unions very early, and on the part of the woman very seldom.

15,062. We may take it your strictures on separation apply almost entirely to its effect of the man?—Not absolutely always.

15,063. You said separations in your judgment were a bad thing, especially for young people, but is it not your experience that it is these young people who marry hurriedly and have tiffs and apply for separations, that ultimately manage to jog on very well? If at an early stage in their married life they were able to obtain divorce on the generous terms you propose many young persons would be divorced and separated for ever, who under the present system are frequently reconciled by the advice received from magistrates, and are thankful for it?—That might be so. One does not come across them often when they have gone back again. You do not see very much, but I have had to advise, when the cases are coming on and the people are young, that they should not go before the magistrates, because I have a feeling whatever the magistrate said they would be always nagging: "You know I brought you up the other day; I will bring you up again."

15,064. Does not that bear largely on your evidence as a whole? I would respectfully suggest that a solicitor of your great experience comes across people at the moments of their difficulties; others who work amongst the poor come across them when those difficulties have been got over?—Of course I see them at the bad time.

15,065. You said in regard to habitual drunkenness that you strongly objected to definition?—Yes.

15,066. Would it be your view that, whether as a ground for separation or divorce, habitual drunkenness should be interpreted apart from definitions by the discretion of the judges or magistrates?—Yes. My idea is that the words "habitual drunkenness" explain themselves.

15,067. Would you apply the same principle, that is discretion rather than definition, to cruelty as well?—Persistent cruelty.

15,068. Cruelty as a ground for separation, or, as I think you stated, as ground for divorce?—Yes, as it is defined now. There is no definition particularly.

15,069. You do not want definitions?—No, I object to definitions. I think you narrow things at once when you start defining. Take the definition of "habitual drunkenness"; it is a ridiculous one.

15,070. You leave what constitutes cruelty and habitual drunkenness not to the legislature in any way, but to the discretion of the individual judging it?—Yes.

15,071. With that extension of jurisdiction the number of judges would be large?—Yes.

15,072. You do not think that would have the effect of one judge in one place calling a thing cruelty which another would not, and similarly with regard to drunkenness?—I am afraid it would have that

effect; I do not see how you can get out of it, but the same applies now to magistrates.

15,073. Still more with regard to divorce. It would soon become plain what was called "cruelty" in one court was not called "cruelty" in another, and what was called "drunkenness" in one court was not called "drunkenness" in another, and persons would soon get to know the characteristics of the different courts, and arrange their domiciles accordingly?—I am afraid you cannot get out of it.

15,074. I was very much interested in what you said about the extension of the grounds of divorce. You were in favour of extending the grounds to imprisonment for three years?—That is penal servitude.

15,075. Do not you feel that when a man is punished by a sentence of three years, the crime need not have been very excessive, he has paid his penalty to society by bearing that punishment, and is it not a hardship that an additional punishment should be inflicted by the possibility of losing his wife, home, and children when he comes out?—It is equally hard on the wife to be living alone all the time he is in prison. He must think of that sort of thing before he commits his crime.

15,076. With regard to desertion for 12 months, I suppose we may take what you said about that as governed by your admission, that in your own judgment you thought that when two persons mutually agree that their married life was no longer desirable, they should be allowed divorce?—Yes.

15,077. That is to say you would have no fear, it would not concern you whether desertion for 12 months gave rise to a great deal of collusion or not?—No.

15,078. You would say collusion, so far from being a bar to divorce, was rather a reason for it?—A reason for divorce.

15,079. Yes. You say if two people show by their conduct they want to get rid of one another, that is a good reason for letting them get rid of one another?—Yes, but you must remember before two people would agree to that there must be very serious differences between them.

15,080. Why?—Otherwise they would not agree to want to get rid of each other, and two people would not walk in and say: "I do not think we hit it off; let us get a divorce."

15,081. May they not have inconsistent tempers, and say "We will mutually separate for a year, and then we can do what we like"?—A year gives a long time for reflection.

15,082. My point is that evidence of collusion is rather in your mind a reason why people should get divorce?—Yes, or rather I should not look too closely for collusion.

15,083. Do you not think there would be this difficulty in allowing divorce for desertion for 12 months, that that would make divorce exceedingly easy?—Yes.

15,084. You were speaking about the hardships of women of the working classes when they are only separated or when they are deserted, and you seemed to think they were worse off than those who belonged to the better classes. On the other hand, is it not the case that respectable women of the working class can get many kinds of employment which it is very difficult for women of another class to get, such as service, charwomen, cleaning or housekeepers?—The fact that she is married is always against her to this extent, that when you have a married woman you never know when she may go back to her husband, or her husband may turn up, or what her family is.

15,085. It is my experience there is an immense amount of kindness among working folk, and when you hear of a woman in this position there is a general desire to find work for her, and in every way to make her life happier?—I agree there is an enormous amount of kindness, but I do not know whether they are prepared to extend that permanently, that is temporary kindness.

15,086. I have had a good deal of experience in dealing with women under these distressing circumstances, and I would ask whether it is not an exaggeration to imply that working-class women separated from their

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[Continued.]

husbands have practically no alternative but to be immoral?—No, I did not say that they had practically no alternative; I said it was a great incentive, and some have very little initiative.

15,087. I think you said a woman in those circumstances who had no special trade had no other course but to re-marry, or if she were not able to re-marry, to live an immoral life?—Yes, I am afraid I have found that so.

15,088. I submit in my experience of working women under these circumstances it is not at all that, but there is a general conspiracy of kindness to prevent that, which is largely successful?—I agree, but that is not extended indefinitely. You cannot expect it. They are very poor. They cannot always keep this other woman and her family.

15,089. You suggested, in your judgment, divorce ought to be possible by mutual consent, and you would only bring in the operation of one of these causes if one of the parties was not willing?—Yes.

15,090. Does not that come to this: That where there is any want of agreement you invite one of the parties either to desert for a year, or to indulge in drunkenness in order to obtain the divorce?—The other party is not bound to bring it; whatever he or she does he will not do it.

15,091. If you had your way your point of view would be that the court should not try to find reasons why a divorce should not be given, but, on the contrary, to do everything to facilitate it?—I do not say that. I think when a person has proved his case, such a case as is allowed to divorce a person, the court ought not to go out of the way to say: "What have you done to prevent this divorce going through?"

15,092. Your view would be that what the court ought to do is to try to enable the divorce to take place, unless there is some strong reason against it?—Yes.

15,093. In every case?—In which a person proves a case.

15,094. In answer to Lord Guthrie, you spoke of the social position question, the operation of social and public opinion as being a likely deterrent to applications for a divorce under your extended principles, but surely that would not apply if divorces became permissible for very different reasons than they are now. Is not the reason why a person dislikes being in the position of a wife who has obtained a divorce, or against whom a divorce has been obtained, that it is mainly on sexual grounds? Would there be the same social deterrent if people could obtain a divorce for one year's desertion or drunkenness, or cruelty?—You mean they would not ask for the other?

15,095. There would be no social deterrent. Social opinion would gradually cease to be operative?—If they become more frequent?

15,096. Yes?—I do not know that they would be so frequent as one anticipates.

15,097. At any rate that deterrent would be largely removed?—No, I think there would always be the social question.

15,098. Is it not the case in Australia that when these grounds have been permitted by the legislature, the social opinion about divorce has entirely changed?—I do not know.

15,099. You agree it is so in America?—But we are not American. I think it is largely in our nature, the social question with regard to this. They would still look at it in the same way.

Mr. HENRI PIERRON called and examined.

15,119. (*Chairman.*) You are a member of the firm of Pierron and Ellis, who carry on business at West Kensington?—Yes.

15,120. Have you had a very large experience of divorce and separation cases especially in the metropolitan police courts?—Yes.

15,121. I think you have been concerned with many hundreds of these cases during the past 15 years?—Yes. I have been admitted 15 years, and before that I was articled for five years to the last witness.

15,100. May I say your evidence would rather make us more American than we are?—I hope not.

15,101. (*Sir George White.*) I understand that you are strongly in favour of the county court jurisdiction. Is that for London as well as for the country?—Yes. I am speaking principally of London and not the country.

15,102. We have had evidence from witnesses who would be in favour of it for the country, but who hold that there is no necessity for such jurisdiction in London?—I do not agree.

15,103. You agree it should be for London as well?—Certainly.

15,104. Would you have every county court take these cases, or have it in districts?—In London every county court, on special days.

15,105. Your evidence goes to show you consider separation orders very unsatisfactory on the whole. Following up the question his Grace put to you, may I ask whether you have any personal knowledge of the after effects of separation orders? People come to you when they want separation orders and get them. How far have you had experience or any knowledge of what transpires afterwards?—You sometimes see them afterwards; of course not very often.

15,106. That is to say, you could not give any personal experience as to in how many of these cases they come back to each other?—No, but one knows cases where a woman complains of her husband's cruelty and also says he is carrying on with another woman. Then she gets a separation, and he goes off and lives with the other woman.

15,107. So far as the legal aspect of the case is concerned, when it is dealt with by you it is done with?—Quite.

15,108. You know very little by personal knowledge of anything that transpires afterwards unless the case comes to you again, which you admit is very rare?—Yes.

15,109. Do I understand that you go the length of thinking separation orders should be done away with?—No, I think not: I would still keep them.

15,110. In regard to divorce you stated you thought that a single act of misconduct should not prejudice the case of a petitioner in getting a divorce?—Yes.

15,111. Would you apply that to both sexes?—Yes, if a man took his wife back again—

15,112. Within a limited time?—No.

15,113. (*Chairman.*) Lord Guthrie asked you whether you thought one year was sufficient as compared with four years in Scotland. I do not know whether you remember when that four years was fixed. It was about 1670, I think?—

(*Lord Guthrie.*) 1570, 340 years ago.

15,114. (*Chairman.*) In those days I take it the telegraph, the steam engine, the newspapers, and the daily post did not exist?—No.

15,115. You could not follow or trace people with the readiness you can now?—No.

15,116. Does that influence your view at all in thinking that the time might be shorter than it was in the days so far back?—I think that assists the view, certainly.

15,117. You can more easily find out anything there is to find out now?—Yes.

15,118. Than you could in the Middle Ages?—Than you could in the year 1570.

15,122. Have you had many hundreds of this class of case, both divorce and separation?—Yes, but principally cases of separation in the metropolitan courts.

15,123. Is your evidence directed mainly to that?—Yes, mainly. I have had a fair number of divorce cases, but nothing like the number of separation cases.

15,124. Do you agree with the witnesses who say that local courts should be formed to deal with divorce cases?—Yes.

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[Continued.]

15,125. That is upon the ground of expense principally?—Yes, principally.

15,126. I do not think that I need go in detail through the whole of your proof, because it covers a good deal of the ground we have already had before us. It was prepared a good while ago, and I think covers ground we have had so often?—Yes.

15,127. There is one point which has not been brought out, which is this: You think removing the cases to distant courts takes away to some extent the check of publicity?—Do you mean by bringing them to London?

15,128. Yes?—From the point of view of publicity, I think yes.

15,129. You mean that the thing is not heard of in their own neighbourhood in the same way?—Yes.

15,130. And it militates against the check of publicity?—I have no doubt that is so.

15,131. Then you would give the right to poor persons to appear by either counsel or solicitor?—Yes, I think so.

15,132. Then with regard to the question of what local courts should have this jurisdiction, I should like you to tell us what is your view?—My view is that if one did not consider expense, it would be better to have a circuit system of judges and officials to deal with it, who should go to all necessary places that there are now county courts in, for example. I think that would probably be the best course, but then that would be a somewhat expensive course, and naturally one looks to see to what extent any increased facilities will increase the number of cases. But if it is a question of choosing which of the existing courts is the best, I have no hesitation in saying the county courts.

15,133. (Lord Guthrie.) Existing local courts?—Yes.

15,134. (Chairman.) The police courts you do not approve of, because you say that there exists in them no machinery for dealing with even the simplest interlocutory matters, and, what you consider the most important of all, there are no facilities for obtaining a jury, and magistrates have had no experience in dealing with that class of case?—Yes.

15,135. Nor is there any very promising material either in the personnel or the court buildings?—No.

15,136. You also add that you think provincial courts of petty sessions with benches of justices are not suitable as at present constituted. You have had experience before them?—Yes.

15,137. Will you tell us why you take that view?—I do not think that the justices have sufficient experience to deal with matters of this sort.

15,138. Either in separation cases or in the other cases?—Yes, and I think there is also a great disadvantage in having several justices on the bench and taking the decision of the majority of them, I mean in a matter of divorce.

15,139. You mean the majority of votes of the justices?—Yes.

15,140. Can you tell me if that is done?—Yes, it is done in separations that come before them, and I think that it is not satisfactory.

15,141. Are those cases, according to your experience, fully or hurriedly tried?—I think before justices they are fairly fully tried, more fully, in fact, than in the police courts.

15,142. By the police courts you mean the stipendiaries?—Yes, the justices have more time.

15,143. You say that whatever system is ultimately adopted, to carry into effect any increase of divorce jurisdiction, a necessary preliminary step will be the division of the country into suitable areas or districts?—Yes.

15,144. You have made some practical suggestions. Perhaps you would kindly state what they are?—Do you mean with reference to the different courts that could be utilised?

15,145. Yes, you will understand what I mean if you will kindly follow your proof?—I have suggested that there could be courts erected in centres for dealing exclusively with such matters, or that additional powers could be conferred on county courts, or on the police courts, or there could be some special judges appointed

on the circuit system, and use made of the present buildings as courts on days when they were not used. I think that could easily be arranged.

15,146. You are in favour in the first place of the erection of special courts with the necessary offices and accommodation for clerical and other staffs, and everything else?—Yes, I think that would be the best, but the expense would be great.

15,147. I was afraid that we should hear something about that?—I quite follow that, but I put it in because I felt it would be the best.

15,148. Failing that, what does your experience lead you to think is the simplest way?—I think failing that a circuit system.

15,149. Of county courts?—I should prefer a circuit system of specially appointed judges. The view I take, and that is only gained from a London experience, is this, that the present county courts could not do the work without an increase of staff, including judges; and if you are going to make an increase, then I take the view that you should make it by appointing persons specially for dealing with these matters. If you can get out of making an increase I think the county court as at present constituted is the best of the existing tribunals.

15,150. I think that makes the point quite plain. I think we may pass over a good deal of this because we have had it so often before. Would you put any limit upon the jurisdiction of the court?—Decidedly.

15,151. Will you tell us what that is?—It is rather difficult to say without experience, but the limit I suggested was that the annual income should not exceed 250*l.* or the possession of property of the value of 500*l.* That was the limit I suggested might be tried.

15,152. At any rate the point is that these courts would not take the big cases, but only the cases of these people who could not afford to go to London?—Yes, I think it must depend upon the income of the parties. I do not see any other way which would be satisfactory. I think also that there should be a limit upon the amount of damages claimed. I do not think that they should be unlimited. I have suggested 100*l.*

15,153. The next point upon page 7 of your proof is that no system of limitation of jurisdiction which enables a petitioner in the High Court to avail himself, or herself, of a cause of action, or obtain a remedy different in either kind or degree or effectiveness from that obtainable in the same circumstances in the local courts, can ever be satisfactory; that is to say, people should be on the same footing according to their means?—Yes, entirely on the same footing. It should not be said that you can have a remedy in the police court or in the county court for this, and that you can have a remedy in the High Court for that.

15,154. Then you have some detailed suggestions to make about procedure?—Yes.

15,155. As that is only detail, may we print on the notes that part dealing with procedure, so that we can study it for ourselves?—Yes. This is what I suggest. (*The following was taken as read:*) Proceedings should be commenced by the petitioner filing at the court a petition on oath, setting forth the date and place of marriage, number and ages of the children, &c., and showing the grounds of complaint and the relief sought—practically on the lines of a divorce petition in the High Court under the present practice. The petition should also contain a clause showing the respective means and income of petitioner and respondent, proving the right to proceed in the local court, and all other necessary particulars. This would also enable the court to deal with questions of alimony without a separate petition. A list of all documents relied upon by the petitioner, or which he intends to adduce in evidence on the hearing, should be set out in the petition, sufficiently describing them for purposes of identification, and stating in whose possession such documents are. The opposite side should (under rules to be made) have the right to obtain copies and to inspect these documents. No documents other than those specified in this list, or documents afterwards discovered and disclosed, should be admissible on the trial. The petition should be sealed by the

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[Continued.]

court and served personally on the respondent or at his or her then place of abode, by any person over the age of 16. The procedure for substituted service is liable to become unwieldy and expensive, and the present system of serving summonses in the police courts by leaving at the defendant's last known place of abode has been found in practice to work very well generally, and not to have been productive of injustice. The few cases in which service at the last known place of abode has proved unjust would not arise if service were made at the then place of abode. At the same time it is obvious that machinery must be devised for ensuring that the proceedings come to the knowledge of the respondent, and in a certain proportion of cases something of the nature of substituted service must be available to the complainant, *e.g.*, to meet cases where defendant is deliberately avoiding service or has disappeared. Provision should be made for service to be effected by any person who would be competent to serve a High Court writ, excepting the petitioner. If it were found in practice convenient to appoint process servers like county court bailiffs, or magistrates' warrant officers, these functionaries would ultimately take over the duty of service. My view is that interlocutory proceedings should be restricted to (1) applications for further and better particulars of the allegations contained in the petition or the answers of the respondent or co-respondent; (2) applications for alimony *pendente lite*; (3) taking the evidence of a witness on commission on good cause (*e.g.*, illness); and (4) an objection to the jurisdiction. Immediately after service, say within three days, any party objecting to the jurisdiction of the local courts on the ground that the income or means of the petitioner and respondent are in excess of the limit, should be allowed to file an affidavit setting out the grounds of objection, and the issue so raised should be determined by summary application before any further step in the matter is taken. Assuming no such objection to jurisdiction is taken, then the respondent or co-respondent (if any) should within seven days of service of petition (or in the event of an application for further particulars within such further time as the court may order) file his answer, which should deal shortly with the allegations in the petition, and contain full particulars of any cross allegations, and fully disclose all grounds of defence intended to be relied on, and should also contain a list of documents similar to that contained in the petition, and subject to the same right of inspection and taking of copies, and should clearly state the relief (if any) sought by the person filing it. On the filing of the answer or answers, petitioner should have the right to particulars on application within three days. I do not think that any more elaborate pleadings or interlocutory proceedings will be found to be necessary in the ordinary run of cases, but to meet special difficulties or emergencies it would be well to give the court discretion to order a reply, and to extend or vary the ordinary course of procedure for good cause shown. Within three days of the filing of the answers it should be competent to any party to notify the registrar of a desire for a jury. At the expiration of this three days the registrar would fix a day for hearing and notify the parties by post. Upon the trial the parties should have the right to appear in person or by counsel or solicitor, and the trial should be simple in form. The course, I think, of a trial before a local court should be as follows:—Opening by petitioner; witnesses examined and cross-examined; respondent's witnesses examined and cross-examined; co-respondent's witnesses examined and cross-examined; speech on behalf of the respondent and co-respondent; right of reply by petitioner where witnesses called by either respondent or co-respondent; summing-up by judge. The evidence of witnesses should be taken down, preferably by an official shorthand writer, as in case of criminal trials. This would afford some security against perjury, and would act as a deterrent to untruthful and reckless witnesses. The costs should be as low as circumstances permit, having regard to the efficient dealing with the case. A scale similar to that now in vogue in county courts could

easily be prepared. A fee should be payable on filing petition and other proceedings, and a hearing fee and jury fee paid. In ordinary circumstances not more than six weeks ought to elapse between the filing of the petition and the decree nisi. An appeal should be allowed from the decision of the local courts on similar grounds to those now allowed in appeals to the Court of Appeal.

15,156. Then on page 11 you proceed to consider the legislation with regard to separation and divorce, and you point out that it is piecemeal legislation, and you deal with the way in which divorce and separation can be dealt with. Then on page 12 you say: "I shall deal with these various separation methods." Will you tell us the point you wish to make as regards any remedy you would apply to the present state of things?—I do not quite follow what you are referring to.

15,157. On page 12 you summarise the legislation which has taken place. Have you any remedies to suggest? We know the legislation. The point we want to get at is, knowing what it is and what takes place under it, what are the points you wish to make and the remedies you suggest?—The points that I wish to make are that the same grounds should be available in all courts dealing with divorce matters, and that they should be grounds of divorce and not grounds of separation.

15,158. That is the substance of the point?—That is so.

15,159. Perhaps you will take up your proof at the bottom of page 12. That gives a summary of your views. Will you read what you say with regard to that?—Yes. It is beyond doubt that this extraordinary state of things does operate as a hardship, and a denial of justice in many cases where on every ground relief ought to be obtainable. Another instance of the unequal working and lack of co-ordination between the two courts is found in the different methods of dealing with desertion. In the High Court desertion must have continued for two years or more, but is equally available for either husband or wife. In the police courts, however, whilst desertion affords no ground for relief to the husband, it is available for the wife from the day the desertion takes place. And then in the case of cruelty I say that there are distinctions, which appear to be founded on no rational basis. In the High Court cruelty alone is sufficient ground for a separation order, but in the police court the cruelty must be persistent cruelty.

15,160. You point out the difference between the two?—Yes.

15,161. You think that they ought to be uniform?—Certainly.

15,162. You think where they could be a ground of separation they should be a ground of divorce?—Yes, but of course it must be serious cruelty. I think one should keep one's eye upon whether the parties may be reasonably expected, having regard to the circumstances, to live together or not. That should be to a great extent the governing factor.

15,163. Then you point out a matter which I think we have already noticed, that in the High Court there is no power to deal with habitual drunkard cases, although there is in the separation order cases in the police court?—Yes.

15,164. You think that power should be given to the High Court?—I think the same powers should be given to all courts dealing with the matter.

15,165. That is to say a wealthy person cannot go to the High Court in the case of a spouse who is a habitual drunkard, although a person of the poorer classes can go to the police court?—Yes.

15,166. Of course anybody can go there too?—Yes, but that is inadequate because you can only get 2*l.* a week.

15,167. I was coming to that. You mean you cannot get enough maintenance?—Yes.

15,168. That you have dealt with there. Then you say that another discrepancy between the powers and working of the two courts arises when you come to deal with the children. Will you tell us what point you make as to that?—Yes; with regard to the

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children I think that there should be the same powers in all courts dealing with these matters. At present there is no power with regard to custody to anyone but the applicant, nor to order access in the police courts.

15,169. You suggest further that remedies for maintenance should apply in the High Court as much as in the police court?—Yes.

15,170. Then you refer to the decision of *Harriman v. Harriman*. Your point is that the order for separation should not prevent the period of two years' desertion required for a ground of divorce running?—Yes, that is so. That has led to a great deal of hardship. I had one case in which there was very great hardship.

15,171. That is got rid of if the order is only for maintenance?—That is so.

15,172. Then you also point out another inconsistency as to the power of the police court with regard to the question of settlements. Broadly speaking, whatever the tribunal is, you think that they should have the same powers?—Absolutely the same powers.

15,173. You point out what we have had already, that the county court and High Court powers of getting in money are not sufficiently drastic?—Yes.

15,174. You want to apply the police court principle?—Yes, or else very little of the money ordered to be paid will be paid.

15,175. You also suggest what we have had before, that power should be granted in order to enable orders being made against the employer?—No; I do not suggest that.

15,176. You suggest that the money should be paid to an officer of the court?—By the husband. I do not agree with granting an order upon the employer, because I am convinced that it would result in a lot of men being dismissed. An employer would say, I am not going to be troubled with paying a part of the wages to the man and part to his wife.

15,177. Then there is another defect to which you draw attention, which is that the Act of 1895 does not prescribe any method for the enforcement of an order for custody of the children?—Yes.

15,178. You think that should be introduced?—Yes, if brought on the same line as the High Court it would be a good thing.

15,179. Your next point is a point of evidence. You think that a marriage *per se* should be sufficient proof?—Yes, I had two cases in which the decisions were inconsistent on that point, one in which a woman married, after not having heard of her first husband for a considerable time, and it was objected that she had to prove he was dead, and the magistrate upheld that view and declined to make an order. I had another case some time after that before a bench of magistrates, in which they took the opposite view.

15,180. What was that view?—They took the view that the marriage was proved by the woman swearing to it and producing the marriage certificate, and that if the husband said it was not a legal marriage, because the first husband was living, he had to prove that.

15,181. But the question of proof is as regards the life of the other person, not as to the marriage?—At the time of the marriage.

15,182. It has been held that a certificate and the evidence of the party proves that there was a marriage, but whether it was legal or not is another matter?—Whether the other husband was alive?

15,183. That is an independent matter of principle?—It is a question whether the woman has to prove that her first husband died, or whether the second husband has to prove that he was living. That was the difficulty that arose in those cases.

15,184. I do not know that we need consider this. With regard to the effect of separation orders, what does your experience lead you to conclude?—That permanent separation orders are bad, taking them generally.

15,185. Will you give us your grounds for that?—The grounds are that they leave the parties married and unable to form other ties except immoral ties. That is the chief ground. They are useful in some cases in separating a woman who is badly treated by her husband. They have that use, but that seems to be the

only use, and I think it is outweighed by the disadvantages attached to them.

15,186. From your experience you think they lead to immorality?—Yes.

15,187. That is from your actual experience?—Yes.

15,188. Have you any other objection to make to them?—No, I think it can be all included under that head.

15,189. This is an important part, and I think perhaps you might take up the detail of your proof at page 17?—There can be no doubt that in a very large proportion of cases in which orders are granted to people up to middle age the result is that one or both of the parties afterwards contracts or contract sexual ties of a more or less permanent nature. These of course vary from the frequent case in which the husband takes another partner without the formality of marriage to the cases in which he does not confine himself to one other woman.

15,190. You say that is frequent?—Yes. In either of these cases, and in any of the alternatives between them there can be no doubt that the man undergoes a process of moral and social degeneration. He loses his self-respect and the respect of his neighbours, becomes furtive, predatory, irregular, unsettled and less inclined to the sustained effort for which the pride of house and family supplies the ordinary motive. The effect of this deterioration is necessarily not confined to himself, but affects also the woman or women with whom he comes into relation. It must also have an unfortunate effect on the general body of public opinion, as people come to regard these irregular unions as the necessary and inevitable consequence of separation, and are more and more disposed to condone them and relax the old moral standards. It would be interesting to know what proportion of the annual tale of illegitimate births is referable to this cause. It would certainly be very considerable, as I have found quite an appreciable number of bastardy cases in which a married man separated from his wife was either the father or the original cause of the mother's lapse into incontinence. On the economic side the consequences of separation orders to the man are equally disastrous.

15,191. Can you give us any information of the number of cases where a married man has been separated under an order and has had bastardy proceedings against him?—No, it would be impossible to tell the percentage, but they are appreciable.

15,192. I mean where there is an order for separation and intercourse has been permitted with somebody else, and there has been a bastardy application made against him?—Yes, they are considerable, but I could not give you any idea how many. They are nothing like the proportion of those who live with other women and have illegitimate children.

15,193. The point is that it is not a mere casual case, but sufficiently frequent to make an impression upon you?—It has been sufficient to make an impression upon me, by the fact that I have come across several of such cases.

15,194. Then you proceed to deal with the economic consequences of such orders?—Yes. The income of the typical working man affected by these orders may be taken to vary roughly between 20s. and 40s. per week. This sum represents, when properly expended in a joint home, a tolerable degree of comfort, and, administered with a fair amount of skill, does often result in a wholesome and satisfying home. When, however, instead of being applied to the upkeep of one home it has to support two different homes its inadequacy becomes at once apparent. It is in many cases impossible for either of the parties to maintain a standard of life necessary to keep them either reasonably comfortable or moderately efficient. The husband goes into comfortless furnished lodgings, which, being without any attraction for him, lead him to spend much of his time in the street or drinking, and tend generally to his downfall. It is impossible to trace the numerous sorts of trouble that result, but there is no doubt that as a rule the effect is to land him into difficulties and despondency and spoil or harm his after life to a great extent. Upon the women separation, of course, acts

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from the social point of view in the same general way, but to different effects. Some of them who have respectable friends and children continue to lead reputable lives—but lives cramped, limited, and unsatisfied. Others go down, and either ultimately lead lives of adultery (more disastrous to a woman than a man) or even join the ranks of public women. Individuality of temperament or circumstance seems to play a greater part among women, and no general results can be said to occur. On the financial side, however, I have no doubt that, unlikely as it may seem, the separated women in the main fare better than the men. When they come back to the court after a year or more, usually to enforce payment of the order, they are almost invariably better dressed, better fed, and generally more prosperous in appearance than before the separation. What the reason for this is I have never been able to determine certainly, but I fancy the solution is to be found in the woman's capacity to get better value for her money, and in the fact that whereas a man almost invariably tries to make some sort of an independent home for himself, the woman usually goes to live with friends or relations, and her small resources are made the most of; and moreover the release from a life which is, in most cases, one of considerable domestic drudgery seems to have a good effect on her physical well-being.

15,195. You say that it is difficult to determine the effect of the orders upon children?—Yes.

15,196. It varies according to the circumstances of the home?—Yes. I think the question of the children in these matters is a very difficult one indeed.

15,197. On the next page you summarise your view?—Yes. On the whole I am strongly of opinion that the general effect of separation orders is unmitigatedly evil. It leaves both the parties with more limited means and more temptations, with the ties and much of the responsibility of matrimony without any of its advantages. It tends to create a sense of hopelessness and lack of outlook, which operates to the destruction of self-respect and all civic virtues. It creates whole classes of social outcasts, and puts them in a position in which immorality and many consequent evils are absolutely inevitable.

15,198. What is your remedy for all that?—Divorce.

15,199. In the cases where it is wanted?—Yes.

15,200. Where the causes arise?—Yes.

15,201. Then with regard to Question 2, that is the amendment with regard to separation orders, that is assuming that they are left as they are?—That is assuming you will leave them.

15,202. That you deal with further on?—Yes, in answering Question 4.

15,203. Then upon Question 3 with regard to publicity of reports of divorce and matrimonial causes, what is your view?—I do not suggest any alteration in the present practice. I think it is important that they should be published, and that it would be a very bad thing if nothing were heard about them and no publicity given to them.

15,204. Do you mean with all the details of the cases?—No, I do not say with all the details, but I think speaking generally,—of course there must be exceptions everywhere,—that the reports of the newspapers dealing with these matters are satisfactory.

15,205. You wind up by saying you think that the judge could usefully be clothed with power to restrain the publication of the names and addresses of witnesses?—Or others.

15,206. In cases in which he thinks that the publication might have harmful effects?—I think that might be done, but I do not think that it would be possible to give the judge a discretion to say what should be published and what should not. It seems to me to be quite a task for him to say that a portion of the evidence may be published and that a portion must not be published.

15,207. Then Question 4 is with regard to the alteration of the law?—Yes. Before passing to that may I say the reason for restraining the publication of other persons' names is that sometimes in cross-examination names are brought in of other people

which does very considerable harm; for instance, a wife against whom adultery is alleged may be cross-examined as to her credit on her relations with some other man, possibly before marriage. It is a great hardship on that other man.

15,208. Then your general point, as you proceed, is to bring both classes of courts into line, and, as you say, co-ordinate their working, so that the present anomalies should cease, and it should no longer be possible in the same country for one court to give relief on grounds which are not cognisable in the other, and for the other court to administer relief different both in nature and extent. That is the general summary of that?—Yes.

15,209. You draw a line of limit as to the amount of the means of the parties, as to the damages recoverable or on some other similar basis?—Yes.

15,210. I think the next point is the broad question of amendments required in the law. Will you tell us what those are, according to your view?—I think that the grounds for divorce should be extended, and, as I have said before, I think permanent separations should be abolished, and all grounds of relief should be grounds for divorce.

15,211. I think you have not given the extension yet?—No, the extended grounds are at the bottom of page 23.

15,212. First of all you place the parties on the same footing. I see that you give a list?—Yes, I have a list, first of all, of the relief to the husband, and then the relief to the wife.

15,213. Perhaps you would just read that?—Yes. Relief to the husband: adultery, habitual drunkenness of wife; desertion of wife for two years or upwards without reasonable excuse; or disappearance for seven years. I think it might be worth considering whether it should not be five years, but I certainly should not agree with three years, as somebody has suggested. Then insanity of wife for three years, or proved incurable; conviction and imprisonment for a long term, say upwards of five years, either continuously or in the aggregate, and subject to the condition that the crime was one not connived at by the husband; conviction of a crime of violence against the husband, and sentence to a term not less than 12 months' imprisonment; cruelty, including the communication of syphilis; premarital unchastity, resulting in pregnancy at marriage; malformation. On the other hand, I think the causes which should form a ground for relieving the wife are, adultery with aggravation, *i.e.*, under common roof, habitual, or continuous; or adultery subject to the form of decree suggested in the table of decree hereafter. That is, suspension between the decree nisi and the decree absolute.

15,214. You do not place them on the same footing?—No.

15,215. Why do you do that?—I do not think that the wife should be able to get a divorce on the ground of a single act of adultery on the part of the husband. Of course it is in a very few cases that the wife would want to do so. The only cases in which a wife would really want to do so would be when possibly she had formed an affection for somebody else, and seized the opportunity of that single act of adultery to get rid of her husband. Then to continue the causes: habitual drunkenness; desertion for two years without reasonable cause (in this case the court should have power to make a provisional maintenance order); cruelty, including neglect to provide maintenance for wife and children causing suffering to either; the communication of syphilis; insanity of husband for three years, or proved incurable; conviction of husband for long term, say upwards of five years, or several convictions amounting to the same term in aggregate; or conviction of a crime of violence against wife, and sentence to term of not less than 12 months' imprisonment; incurable impotence.

15,216. Then you pass on to deal with how you would extend the definition of habitual drunkenness?—I agree with the last witness in not having a definition.

15,217. You say you think that the court ought not to be hampered by any hard and fast rule of this

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sort, but may well be trusted in each particular case to decide whether habitual drunkenness exists to such an extent as to entitle the other party to relief. That is the point?—Yes.

15,218. Have you known many cases under the head of desertion in which hardship has been inflicted through desertion without the possibility of proving adultery?—Yes.

15,219. Will you explain that?—Yes; there are many cases in which a wife for no apparent reason leaves her husband, and goes to her parents or relations, and remains away, and leaves him with the children. At present he has no remedy, except by going into the High Court, and then he gets no satisfaction, because he only gets the separation which he has already got, and for life he is tied to that woman. That seems to me to be one of the hardships.

15,220. Conversely where the man has disappeared you take the same view?—Yes.

15,221. I think you have already said or will say that in cases of habitual drunkenness the court should decide upon the facts?—Yes.

15,222. Then with regard to desertion for two years or upwards, you say that you have known many cases in which the greatest hardship has been inflicted upon a husband by the malicious desertion of his wife?—Yes.

15,223. Then you also add disappearance for seven years as a very necessary cause?—Yes. There are many cases of disappearance where you could not take proceedings for desertion because the facts would not amount to desertion. It may be an intention to desert, it may be that the man died and there was no proof of it.

15,224. You mean where he had left with consent and disappeared altogether, and where there had been no cognisance for so many years of his whereabouts?—Yes.

15,225. You have come across instances of that kind?—Yes.

15,226. You say that you have now in your office three cases of husbands who have totally disappeared and not been heard of for a period exceeding 10 years?—I am acting for wives and that is their position.

15,227. That, you think, should prove a ground for dissolution of the marriage?—Yes.

15,228. With regard to insanity, will you tell us what you have to say about that?—My view is that that should also be a ground if it is incurable, or after three years.

15,229. Why do you put three years? Do you put that as a safeguard?—Yes, to guard against temporary mental lapses.

15,230. You say whatever hardship may be involved to individuals in a small percentage of cases of lunacy would appear to be enormously outweighed by the appalling danger of encouraging the breeding of children by actual or even probable lunatics?—Yes.

15,231. This is so obvious and so well known that it need not be further insisted on. Then as to conviction for a long period of imprisonment, what are the arguments you adduce in favour of that?—The husband by his conduct, or the wife, whichever the case may be, has made it impossible to live with the other party to the marriage, and I think that ought to be a ground of relief to the other party.

15,232. You give an instance. I do not think that we need deal with the name, but will you state the kind of point it illustrates?—A case in which a man is sentenced to death and the sentence is commuted to penal servitude for life. This is a case where the wife was quite young, about 23, and she cannot marry again, and she is tied to the man who will not come out anyhow for 20 years, and possibly longer.

15,233. Has she children?—Yes, she has three young children.

15,234. You say this state of things needs no comment; the mere statement of it carries condemnation?—Yes, that is my view.

15,235. Then you refer to your clause, number 6, which, I think, is conviction of a crime of violence against the wife?—It is husband or wife, really carrying with it a sentence of not less than 12 months'

imprisonment, showing that it is a very serious crime of violence indeed.

15,236. You put that as a ground?—Yes, because I do not think that the wife would feel safe again with such a man.

15,237. Then you say, a state of things in which a wife has escaped murder at the hands of her husband by good luck alone, and who after recovery from her injuries, and his release from prison, finds herself indissolubly bound to him in contemplation of law, and without means of release, is one for which it is difficult to discover any logical justification. That is your point?—Yes.

15,238. You think that the Summary Jurisdiction Act of 1895, carrying conviction in certain cases, is a step in the right direction, but that it is too limited?—Yes, I do not think that an assault which carries with it a fine of 5*l.* should entitle the wife as a matter of course to a separation.

15,239. Then you deal with the communication of disease, and that, you consider, destroys the possibility of a tolerable relationship between the parties?—Yes.

15,240. And also cruelty, which is on the same footing apparently?—Yes, but it must be serious cruelty.

15,241. Then with regard to number 8, that is, a case of pregnancy at the time of marriage?—Yes.

15,242. What do you say about that?—That, I think, should form a ground of divorce. I quote a case that was within my own knowledge, where a man married a woman and he found out soon afterwards that she was in the family way, and she admitted that it was by some other man. He had no remedy and he has no remedy in the present condition of affairs, and must support her and her child.

15,243. The others are malformation and impotence. They are grounds of nullity and you think that they might be included as grounds of divorce?—Yes.

15,244. Is that necessary if they are grounds of nullity?—I rather suggest that there should not be any nullity or restitution suits, that it should be divorce only. It is the abolition of nullity, restitution, and separation that I am suggesting. Of course the nullity goes to make the children illegitimate, which the divorce would not. I think that is worthy of consideration.

15,245. In those cases there would be no children?—There might be in some cases of nullity—in bigamy.

15,246. Not on the grounds you have here?—No, not on those grounds.

15,247. Bigamy is a ground for divorce now?—Or of nullity, I think.

15,248. (*Lord Guthrie.*) There might be children in the case of insanity?—Yes.

15,249. (*Chairman.*) Insanity existing at the time of the contract?—Yes.

15,250. Another point is you suggest that a woman who has committed adultery with a man should be joined as a co-respondent?—Yes.

15,251. And that if she was possessed of separate estate she should become liable for damages?—Yes.

15,252. Have you known cases in which that would have been useful?—Yes.

15,253. You think that a respondent wife should be jointly liable to the extent of her separate estate for the support of her children during infancy, and that her misconduct should not free her from all her obligations?—Yes.

15,254. And that no alimony or maintenance should be paid after remarriage?—Not for the wife, but still something for the children, as long as they are infants.

15,255. What is the next point intended to meet? You say in view of the fact that a certain not inconsiderable percentage of those who now obtain separation orders soon afterwards cohabit, it would probably be found convenient to classify cases and regulate the probationary period on some such lines as those set out in the following list, so that before the decrees were made absolute there would be time given for reflection by the parties, and to enable them to come together again if possible. They have that now?—I suggest, especially if there are to be local courts that a decree nisi would be within six weeks or two

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months, and that there should be time between that and the decree absolute during which the parties could reconsider the matter.

15,256. They could do that now?—Yes.

15,257. I do not follow that there is anything in it?—Some people advocate an immediate decree absolute. That proposition I should not agree with.

15,258. These are all points about a time elapsing between the decree nisi and the decree absolute?—Yes.

15,259. After the discretionary period. Your next point is that during the two years of desertion, or whatever period is fixed upon, that there should be power to a court to allow maintenance?—I think there must be that.

15,260. Upon proper application for the purpose?—Yes.

15,261. You suggest that the period of years might not necessarily be a continuous period?—I suggest that. I think I suggest two years in, say, the past five. A husband may go away for a year without any reason and may come back, and then may stop at home for a year or so and go away again, and the wife would have no chance of getting a divorce if he did that all through the married life.

15,262. You make it cumulative within some time?—Yes.

15,263. As to costs, have you anything to suggest?—The question of costs arises in two ways, first the keeping down of the cost to the lowest possible minimum, and the other question is the question of the husband having to pay or finding security for his wife's costs before the hearing. In the latter case I should suggest that it should be only in cases where the wife was respondent that the husband should have to provide, if he has to provide at all, for the wife's costs before the hearing.

15,264. That is necessary, as a rule, because he is the only one of the two who earns money?—I think, possibly, it is necessary, but I cannot forget that it is not done at present in the police court, and that one nearly always finds the wife is represented.

15,265. There is no security for costs in the police court?—No security, and I do not find that it is a hardship, because the wife, through her relations, is usually represented.

15,266. That really comes to a minimisation of costs to such an extent that security becomes immaterial?—To any considerable extent. I do not think it should be such costs as would bar a man going on if he has good cause.

15,267. Is that the whole of the point you make upon that?—Yes, except incidentally the way of enforcing the payment of costs. The same applies to that as to alimony. In the police court the costs are enforced by imprisonment.

15,268. You want a simple remedy applied for any payment that has to be made?—Yes.

15,269. You propose that there should be a limited scale of costs all the way through?—Yes.

15,270. You think that the result of your propositions might be to abolish nullity and restitution suits?—I think so.

15,271. With regard to the King's Proctor what have you to say?—As long as one accepts the principle that there should not be divorces by consent I think some sort of an official, such as the King's Proctor, should be retained, either the King's Proctor or something similar. I think that matters could be carried on as they are now, so far as London is concerned, and that the registrars of the county courts should act as King's Proctor for the various county courts. I think that would be the best thing.

15,272. You have had a very large experience, almost the largest in London, upon the subject of these separation orders?—Yes, I have had a very large experience.

15,273. You have given the best thought you can to this and you summarise what you say in your proof. Perhaps you will kindly read it?—Yes. My short answers to the questions propounded are then as follows: That there should be local courts presided over by specially-qualified judges aided by registrars and worked on a circuit system, the existing court

houses and staffs being utilised for this purpose, with such local supplementary accommodation as shall be found to be necessary. (2) The effect of separation orders is almost always evil, both in the public and private aspects. The present form of separation should be abolished and replaced by a divorce decree. All orders separating married persons should be made with a view and intention of becoming absolute, and allowing the re-marriage of the parties when it is manifest that there is no prospect of their returning to cohabitation. (3) Publication of reports of divorce proceedings should be allowed substantially as at present. (4) The causes now accepted as valid reasons for divorce should be greatly extended by the addition to their number of those grounds on which partial and limited separations are now granted, and also of certain other grounds which are in modern times almost universally admitted amongst civilised people to be adequate reasons for the dissolution of the marriage tie. Also the present procedure should be varied in such a manner as to minimise its costliness and difficulty, and bring relief within the reach of the poorer classes, and to reduce the divorce jurisdiction to one co-ordinated and correlated system throughout the country, which shall both in theory and in actual practice administer the same relief for matrimonial wrongs to all classes of the community.

15,274. (Sir George White.) I understand that you are in favour of abolishing the principle of permanent separations altogether?—Quite.

15,275. Would you still leave any power of temporary separation in a court of summary jurisdiction?—No.

15,276. The authority of the Summary Act is taken away?—Yes.

15,277. I was a little interested in what you said about the appearance of women who came up to enforce maintenance orders. You said in your judgment that they were generally better clothed and in a better condition than when the maintenance was first obtained?—Yes.

15,278. Does that mean that you attach practically no value to the maintenance order?—No, I think that where women are separated from violent or drunken husbands that it is certainly to their benefit, but I do not think that relief is all the relief that they are entitled to. I think that they are entitled to a divorce and the right of re-marriage under those circumstances.

15,279. I understand that, but you indicate that such women are not influenced by economic reasons particularly to enforce the maintenance order, or to go back rather to their husbands?—Some are. I have had women who have told me that they have gone back to their husbands because they could not get the amounts ordered and could not live without. I have met those cases and they have gone back.

15,280. That is the point I want to get out. In your judgment these women as a rule have no difficulty in finding employment and maintaining themselves?—Yes, they have difficulty undoubtedly, and it is that difficulty which causes some of them to go back to brutal husbands as much as anything else, not getting the allowance and the difficulty of obtaining employment.

15,281. How does that agree with the better condition in which they appear when they ask for the maintenance order to be enforced?—They appear in a better condition, I think, through the assistance of their relations. Those who have not got relations very often go back to their husbands because they have no alternative.

15,282. Do you imagine that the bulk of the cases where a separation order is now applied for would come into the Divorce Court, or would it be very largely reduced?—I do not think it would be very much reduced, because you have to take into account those who do not go for a separation, but who leave their husbands; they would go for divorces and that would balance matters.

15,283. That would mean an enormous increase in divorce cases, of course?—Yes, a large increase.

15,284. I understand that you are not prepared to put men and women on an equal footing with regard to

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a single act of adultery. Is that so?—I do not think so.

15,285. Why not?—One has to consider the home and the children, and I think that there would be very few cases in which a wife would desire for a single act of adultery to go for a divorce.

15,286. Would not she consider the home and the children before she applied? Where she did apply would not there be reason?—Under most circumstances, but she might also feel that she is tired of her husband and has somebody else in her eye, and she might take advantage of that single act of adultery to go for the divorce.

15,287. In regard to courts you gave two or three different modes of dealing with divorce, one or two of which you admitted were not practicable probably, but you ultimately settled upon special courts in preference to the county court?—Yes.

15,288. Would the special courts be presided over by a High Court judge?—No, by a special judge of the court. A High Court judge would not be necessary.

15,289. Where is the advantage between that and the ordinary county jurisdiction if the county court had special days?—My view rather was this: probably it will be found that the county courts have not time to do this extra work which would be put upon them, and that would mean the addition of extra judges. It would mean either the addition of extra judges to the county courts, or an addition of extra judges as circuit judges, to deal with divorce only. If you have to make an addition I prefer that the additional judges should deal with divorce only. I think that it would be dealt with more consistently. I think that is the chief reason. If you had to appoint six more judges on the basis of county court judges or something like that, and those could deal with divorce, it would be more consistently dealt with than by putting them to help the county court judges.

15,290. (Mr. Burt.) There is only one point upon which I wish to ask you a question or two. I think that my questions have been partly anticipated by Sir George White. I want to ask you with regard to placing or not placing the adulterous husband and the wife on terms of perfect equality. The reason that you gave in your evidence in chief was that the wife in many cases, if not in all, would not desire to appear against her husband in a case of that kind. Her not desiring to do it, you would not say that in itself should deprive her of the right of doing it if she did so desire?—Not if it were proper she should have the right.

15,291. You somewhat supplemented what you then said in your reply to Sir George White by stating that questions of family relationship came in. Would not that to some extent come in also in the case of an unfaithful husband?—Yes, it would to some extent, but I do not think to the same extent or anything like it.

15,292. You think, all things considered, you would adhere to the opinion that there should be a distinction between husband and wife in a case of that kind?—Yes, that is my personal view, and certainly if it were decided to give the wife leave for a single act of adultery, I should suggest a somewhat long—say three years—probationary period during which time she might seriously consider it before it is made absolute under those special circumstances. I think there would be very few cases of the wife going through with the matter.

15,293. (The Archbishop of York.) I gathered from what you said that you would not agree with what has been said by a good many witnesses, that an extension of the jurisdiction in divorce, or of the grounds of divorce, would not lead to a large increase in the number of cases. Your opinion is that there would be a large increase?—Yes, I think it would mean a large increase in divorce, perhaps not as large as one is at first disposed to imagine, but I think there would be a very appreciable increase in divorce.

15,294. (Lord Guthrie.) In regard to the disappearance of a husband, will you tell me how the law stands now? Under the Presumption of Life Act after seven years he is held to be dead for civil purposes?—Yes.

15,295. When can the wife validly remarry?—I think never. Seven years' absence of the husband would be an answer by the wife to a charge of bigamy if the husband turned up again, but then she would be married to the first and not to the second, and the children of the second would be illegitimate.

15,296. Up to any period?—Up to any period.

15,297. We have a common law rule that after the disappeared person would be 100 then he is to be presumed dead to all effects. You have not even that?—It is a safe rule, but we have not even that.

15,298. That must be a very hard and not a very rare case. Take sailors, for instance, where a vessel has foundered and they have not been heard of. Supposing the vessel has possibly foundered, but there is no evidence of it, is the woman tied in such a case even after the Presumption of Life Act has gone through?—Yes, she is tied unless she likes to chance it. That is the only thing she can do, but if she chances it and he does appear, then she is not married and the second children are illegitimate.

15,299. Even although the law has presumed his death?—Yes, if the law has presumed his death for the purpose of dealing with his property.

15,300. Upon evidence?—Yes.

15,301. Leading to the reasonable presumption that he is dead?—Yes, even in that case.

15,302. You refer to the allowance being conditional upon her remarriage. Is the clause *dum sola* not always put in?—Frequently not, I think, but I speak with great respect in the presence of my Lord.

15,303. In what cases is it not put in?—I think that the usual course is not to put it in in England.

15,304. Can you explain why that is so?—I do not know why it is, unless it is from this point of view, the husband having done wrong must keep the wife.

15,305. If she goes into a new family and gets another husband to support her, why should the first husband remain liable?—My contention is that he should not.

15,306. And that that clause should always be put in?—Yes.

15,307. And the *dum casta* clause also?—Yes.

15,308. You said you did not think that the power to order an employer to pay maintenance direct to the wife would be a wise one?—I do not think it would.

15,309. Because the man would be liable to be dismissed?—Yes.

15,310. Suppose the wife produces a certificate by the employer that he would be willing to do it, would it not be a desirable thing that he should do it?—If it would not affect the man's employment I think it would be a desirable thing, because it would get the wife the alimony which otherwise she would not get.

15,311. We are told that some employers would do one thing and some would do the other. That would meet the case of those who were willing to do it?—Yes.

15,312. You said that reports of divorce proceedings, speaking generally, were satisfactory. Have you seen the Sunday paper reports?—Yes.

15,313. Do you think that they are satisfactory? I am referring to the weekly heading "Stories from the Divorce Court"?—I do not think that they are entirely satisfactory. I think that they are in very bad taste, but I do not know that they do any harm.

15,314. Take the case of the divorce of a person in a high social position, or of some special notoriety, such as the stage, or anything else, are the reports of the best papers even satisfactory?—I do not say that they are unsatisfactory.

15,315. Are they not?—I do not think so.

15,316. It is a matter of opinion?—Yes.

15,317. You would abolish separation orders altogether?—Yes.

15,318. Are you keeping in view that there are alleged to be 12 million Roman Catholics in England?—No, I have not looked at it from that point of view.

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15,319. And that there are a large number of people in the Church of England who will not have divorce at any price. Must not some provision be made for these citizens?—I must confess that I have

not looked at it from that point of view. That may be so, but I have not considered it.

(Chairman.) I must thank you very much for your evidence.

Mr. ARTHUR JOHN EDWARD NEWTON called and examined.

15,320. (Chairman.) You are a solicitor of the Supreme Court, practising at No. 23, Great Marlborough Street, in the county of London, and you have been in practice over 25 years?—Yes.

15,321. Have you had a large experience in the Divorce Court and in the magistrates' courts?—Yes.

15,322. You are a very well-known practitioner to the court, I believe? With regard to the points you have concentrated in your proof, the first is the question of conferring jurisdiction on any, and what local courts, subject to any and what limitations. Will you state your view upon that?—I am of opinion that jurisdiction should be given to the county courts in undefended cases, of which there are in the course of the year a very large number indeed. I am of opinion that the present mode of procedure before the judges in the Divorce Court in defended or disputed cases should be maintained; the giving of jurisdiction in contested cases to other courts would be likely to lead to great confusion, and to different principles being acted on, in the way in which the cases were conducted and the evidence received.

15,323. Would that enable the county courts all over the country to deal with undefended cases?—I think so.

15,324. Take the case of defended cases, which take the parties longer away from home, and yet they might be very poor parties. Would it be satisfactory to leave them simply to be tried in London?—The view I have taken after thinking the matter over is that for so many years it has worked so well in London, and people have such absolute confidence in that court, that, so to speak, to break up the court into pieces would be very unsatisfactory.

15,325. How would you deal with those parties who have contested cases, but have not the means of bringing them to London?—I really find it difficult to give an opinion with regard to that. The only thing that one could suggest would be, if it were practicable, that the judges from the Divorce Court should go to different towns in the way the judges of the other branches of the High Court do, on assize.

15,326. Your next point is that there should be an efficient staff appointed to attend to the divorce work, that means in the county court?—Yes.

15,327. And the fees should be reduced?—Yes.

15,328. And also that proper provision should be made to enable the causes to be heard upon the day for which they are fixed?—Great hardship arises in the county court from time to time by persons having to attend on several days; after waiting for a long time they are told they will not be wanted. In the case of poor people that would be the real hardship.

15,329. The second point is with regard to separation orders. What do you say about them?—With regard to that, I say I think that the jurisdiction in a way should be extended in this way. There is one particular point I do not think has been touched on by anyone who has given evidence in this Commission, and that is, under the Summary Jurisdiction (Married Women) Act, 1895, as you are aware, if a husband has been guilty of persistent cruelty or been convicted of an aggravated assault, such as has forced his wife to leave him, then and then only has the magistrate the right to grant the wife a judicial separation. So that the separation cannot be granted unless a husband has been guilty of such violence, and it requires a good deal to convict him of aggravated assault. If guilty of cruelty over and over again, and for some reason or other his wife has been unable to leave him, the magistrate has no power to grant a judicial separation. I have a case in my mind, and I think they are not uncommon amongst the comparatively poorer classes, of a woman who has a business of her own which requires her personal attention, and out of which she makes a living. She has a bad lazy husband, who

perpetually assaults her and is cruel in a variety of ways. Before she can get an order for a separation from a magistrate she has to leave him. The practical effect would be the whole of the business is gone, the husband may sell it up or deal with it, and unless she stops away some weeks—some magistrates say a fortnight and others a month or more—she has no power to get an order to separate her from the man who is a bad husband in every way.

15,330. I appreciate the point, but you must not say it has not been mentioned before. It has been mentioned by a great number of witnesses?—I mention it because I have had a case of that sort quite recently—a highly respectable woman, who has had a good business for years and the husband has refrained—

15,331. I think we all appreciate the point. I do not think you mention anything else in connection with separation orders?—No.

15,332. Have you formed any view as to their being made for a limited time or anything of that sort?—My experience of them is not so great as in the Divorce Court, but I have come to the conclusion if a magistrate grants a separation order they are very careful with regard to it, and require full and sufficient evidence. They do not grant them lightly, and if that is so the wife ought to have the right to insist upon the order as long as she likes. They can always come together again if she wants the husband back and he is an altered man.

15,333. Would you be in favour of the complainant in all those cases where a permanent order was made being able to obtain a divorce decree?—Not necessarily.

15,334. The next point is with regard to the publication of reports. What do you say about that?—With regard to that point I think divorce cases ought to be reported, with this limitation, that something ought to be done to stop those scandalous reports which appear in the Sunday papers. It is a regular kind of business for those who report for those papers to distort the facts and paint them up in an attractive kind of way, under the heading referred to, "Divorce Stories," for the purpose of interesting persons, I do not say of a prurient mind, but if they are things which will interest them, and are naughty stories, that kind of view some people take of reading, something ought to be done to stop it; particularly the way they are headed, and the way incidents are referred to and exaggerated and coloured, and pictures of the parties, and so on. Anyone who reads the Sunday papers cannot fail to be struck by it. One has a simple case of one's own, and you see in the paper a picture of your client with an exaggerated hat, and a description of some incident that occurred; she was seen with the husband, and a stick over them. Those things are very low and improper.

15,335. What is the practical remedy you would apply?—That is a very difficult question, as to how you could do it. You could not possibly have a censor, or anything of that kind. The case may be on on Monday, and the papers are published on Friday or Saturday. It is a difficult matter how to avoid it.

15,336. Do you see any alternative between leaving matters as they are and the absolute prohibition of anything except names of the parties, and the decision?—I think if only the names of the parties and just the charge were put in, that the full publicity which now acts as a deterrent to a great extent to many persons would be done away with, if a man saw his name, and so on, without any detail.

15,337. That is what presents the difficulty. On the other hand, you have what you have just mentioned, which is extremely objectionable. Is there any alternative between that limited publication I have just mentioned and leaving matters as they are?—I am afraid there is no alternative that has occurred to my

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mind, although I have thought the matter out. While on this point may I refer to the evidence given by one of the witnesses while I was here, a solicitor I know very well? It is with reference to his statement that he thought there ought to be no reports of divorce cases on the ground that it leads to blackmail. I have had a very long and wide experience of this kind of thing, my offices being in the West End, and acting for the upper middle classes. The view that gentleman took was that in many cases quite innocent persons are blackmailed into paying money rather than have a false charge made against them in the Divorce Court. I have had a great many cases of persons coming to me in a variety of ways, and as to persons trying to extort money from them, and so on, and I cannot remember one, and I have certainly had 500 or 600 divorce cases, besides numbers of persons coming in other matters. I cannot bring to mind the case of one innocent person being blackmailed into paying money under the threat they would be brought into the Divorce Court.

15,338. Have you had any experience of cases where a person who could not be said to be innocent has in any way suffered?—Yes, I have had experience of those matters, but as a rule if they are properly dealt with by anyone of experience they all fizzle out, if I may use the expression.

15,339. What is the class of anything wrong in connection with those cases?—The case I have in mind at this moment is a man of position who commits adultery with a married woman. She knows his position, and she has got a husband. The husband keeps out of the way for a time and then comes on the scene and takes divorce proceedings on the ground that he did not know, he was away; his wife misconducted herself in his absence and has made a confession. It is almost invariably found, if proper inquiries are made, that the husband is a good for nothing, who in any circumstances could not be entitled to damages. If a bold front is shown they are almost invariably dropped at the door of the court, or very often before.

15,340. That is a kind of blackmail, as I follow it?—They are very rare. Mr. Allen, who gave the evidence—I discussed with him afterwards—was talking from what he had heard, and rather appealed to me in giving evidence to say they are very rare indeed. Persons from time to time, if married, are liable to it. A man says "If you do not give me so-and-so I shall tell your wife," but they are easily silenced as a rule, because they know directly they do anything there is nothing to be got. I think the suppression of a report on divorce cases on that ground would be a calamity, because it is so limited in the number of cases that take place, and a good many people take the view if a wrong-doer has to pay something for his wrong-doing not very much harm is done.

15,341. I think we can pass on to the next point, the question of amendments in the law. Will you give us your view about that? You have had a lot of experience in the Divorce Court?—You mean with regard to what we rather call the equality of the sexes question?

15,342. I meant the general amendment of the law as regards the ground of divorce on one side and the other?—I think it would be a calamity if a wife were allowed to have the absolute right to divorce her husband if he has been guilty of an isolated case of infidelity. On the other hand, if a husband stays away from his wife or has a woman under his protection, or persistently is unfaithful to her, she certainly ought to have the right to divorce him without alleging cruelty.

15,343. Or desertion?—Yes.

15,344. Would not your isolated case be open to the danger that the isolated case might be just the class of case in which certain diseases might be contracted?—It would. Whilst on that point, I agree with what several of the witnesses have said; if a man gives his wife a venereal disease, every possible facility ought to be given to the wife for getting her divorce.

15,345. My mind was on another point at the moment. That particular danger is possibly more open to liability of occurrence in the occasional case

than in the persistent case, where a man may, generally speaking, be a respectable person. Do you see the point?—Yes.

15,346. Does that weigh with you on the question of the wife's provision?—No. I am rather alluding to a wife who catches her husband out once—I am using a colloquial expression—and might wish to make use of it for the purpose of getting a divorce. It may be time has gone on, and she is not so attached; but it seems to me it would be a terrible thing, where there are children, if a woman had a right to say, "I will get a divorce, although in other respects my husband has been a good man and a good father, and may have been a kind and perfectly pleasant companion, but he has made this slip." It would be a terrible power to put in a woman's hands, and very often against her interests, because she may be urged by relatives or other persons who do not care about the husband to do this, and rush into it; you have the father separated from the children, and the other effects one can readily anticipate.

15,347. Suppose a case in which that one particular act has resulted in the contracting of one of these horrible complaints, that is assuming there has not been intercourse with the wife afterwards, but that she knows of it?—I think that would alter my proposition, because if a man has once suffered from any serious complaint, such as syphilis, for example, it is known although a man may take every possible care and be pronounced cured, that years afterwards if he falls into bad health it may occur in a variety of ways, and even though his wife may not contract it it may be transmitted to children.

15,348. That is why I ask whether an instance of that kind would modify the general proposition that you advance?—Yes, it would. If a man unfortunately by one act of infidelity incurs syphilis, which is a blood disease and a very serious one, the wife ought to have the right to divorce him. The matter is so serious. She may be fond of her husband, and think he is cured, and then a disease of that horrible character is transmitted.

15,349. If he is fortunate enough to escape you think she should have no right?—Yes.

15,350. That deals with the position of the two sexes. As to anything else, have you anything further to say?—No.

15,351. With regard to a petition for restitution of conjugal rights, you think that the practice should be altered by allowing the petition to be combined with the petition praying for dissolution of marriage? Will you explain that?—At present if a husband refuses to live with his wife she can go to the court and get an order for restitution of conjugal rights, and generally 14 days are allowed in the order in which he is to return. If he fails to do so, that in law constitutes desertion, on which she can file a petition, if he has been guilty of adultery, for a divorce; but the effect of that is that considerable delay must take place owing to the number of cases in the courts; sometimes there is a delay of months, and in my opinion it seems the two could be easily put together if the order is made, and then the adultery proved at the same time as the order for restitution, and then 14 days after, if he has not returned.

15,352. That means a combination of the two?—Yes. I think also it would be a reasonable saving of expense. One appreciates the courts must have proper fees to carry them on, but there are a double set of fees; it is about 7l. on each.

15,353. Then you proceed to discuss the question of insanity?—Yes. I think if either party has been insane, that is to say, certified as insane, for five years, and upon good medical evidence of a reliable character, and the medical men are of opinion that it is quite impossible in all human probability for the party to recover, that should be sufficient ground for a dissolution.

15,354. Have you met in your practice with any cases in which you thought that was a proper course to take?—Several, where great hardship has arisen and persons have remained mad for years. I have met

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two or three which are present to my mind at the present moment.

15,355. The point rather seemed to be that a person who was in an unfortunate state of lunacy might be treated for all purposes as if dead. That is the point?—Yes, they are treated as though dead by the lunacy laws practically, and a committee is appointed, unless they recover absolutely. Then there is always this, which struck me as a serious matter: If a person has been insane for five years and afterwards has apparently recovered, there is grave danger if the parties come together of lunatic children being born.

15,356. Affecting the children?—Yes.

15,357. You mean even if it were doubtful whether the cure was impossible, and the cure did turn out to be sufficient to allow them out, there is that danger?—Yes. I think that five years is a fairly substantial time. One knows that the judges in the Divorce Court would hear evidence with regard to it and be thoroughly satisfied, before they made a decree, that practically the medical evidence could not be contradicted.

15,358. You have some further points about the practice, I think?—Only the question as to whether lists should be published when summonses are coming on, like they are in the High Court. There are a great many in the High Court, and all the clerks of solicitors have to do is to see the list that is published, and they can see about when their cases will be on.

15,359. Those are details of practice?—Of course, they are practice and details.

15,360. As to the decree nisi and the decree absolute you have a point?—I suggest that the time should be shortened to a period of three months.

15,361. That can be done now?—It is very rarely done. It readily occurs to anyone the reason for that may be persons have gone away together, wife and co-respondent, and there may be a child on the way, and however much wrong they have done one does not want to feel that child should be necessarily illegitimate.

15,362. The judge has a discretion now?—Yes.

15,363. It is a question of whether he should exercise it?—It is very seldom exercised in practice. I have been in the Colonies, in Australia and New Zealand, and it is often exercised, sometimes two months and sometimes three months.

15,364. They have a six months' limit?—Yes.

15,365. Why do they exercise it more?—I do not know. It is a common thing for counsel to say three months unless there is reason to think otherwise. In practice it is often done.

15,366. The last point is an important one also?—There are two points. The last of all refers to the case of *Sing v. Sing*. In that case the wife petitioned for a decree of divorce on the ground of the cruelty and adultery of her husband. She was unsuccessful with regard to satisfying the court that her husband had been cruel to her, but she was successful in proving that he had committed adultery. On that ground she got a decree of judicial separation. She can never get free as long as she lives, for this reason, that the parties being apart, unless he calls and assaults her he cannot be guilty of cruelty, and he cannot be guilty of desertion because there is an order. I venture to think there ought to be a change in the law with regard to that. It seems a hard thing on a woman, if she has obtained an order for separation on the ground of the adultery of her husband, that she can never get her freedom.

15,367. You would allow divorce where there has been a judicial separation on any ground?—Yes.

15,368. Either against a husband or, I suppose, against a wife, that after a time that should be capable of being turned into a decree of divorce unless the parties have come together?—Yes.

15,369. You put five years?—Yes.

15,370. You said there were two other points?—Yes; there is another point with regard to the question of the husband being able to obtain a divorce although he himself has been guilty of misconduct. I think I am right in saying the only case where the husband has successfully been able to get that was the case of *Constantinidi*.

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15,371. There are cases of ignorance of the law and compulsion—there are several branches?—That is rather a different branch of it; but speaking from the general principle as the law now stands, if a husband has committed adultery under any circumstances, and his wife has committed adultery, he cannot divorce her. He may get his divorce and the King's Proctor intervenes. I have a very strong case I should like to bring before the Commission on this point. A man, who was a man of the highest character, for 20 years had been in business in this country and was respected on all sides, married a drunken profligate woman. She was habitually drunk; she broke up a place he had, did his business enormous injury, and was habitually unfaithful to him, and he separated from her. For years he tried to make a good woman of her in every possible way. He then, after being separated some years, took a young woman to Boulogne and stopped a week or ten days, admittedly committing adultery with her. Some time after he took proceedings for divorce against his wife and succeeded, and he was asked in the witness box whether he had committed adultery.

15,372. How could he be?—By his own counsel; he said "Yes, I have," and he mentioned the girl's name. He was asked "Have you committed adultery on any other occasion?" He said "No, I have not," and Mr. Justice Bigham gave him his decree. He said, "Here is a man whose character seems above suspicion, who has done his best to get this woman back, and been most kind and good in every way; she is a drunken worthless woman; I shall give him the divorce," and he did so. Inquiry was made by the King's Proctor, and it was ascertained that he had committed adultery with this girl on other occasions, that is to say, the occasion at Boulogne was not the only instance. He was prosecuted at the Central Criminal Court for perjury, and great efforts were made to secure a conviction. The Treasury took it up and I defended him, and we put before the court it was obvious that the man meant—he had not been in the witness box before—that he had not committed adultery with any other woman, and he was acquitted by the jury; so that this man, although there is nothing against his character and career, had this wicked woman as a wife and cannot get a divorce now.

15,373. I thought you said he had a decree?—It was rescinded; the King's Proctor intervened.

15,374. Did Mr. Justice Bigham on the same facts rescind it?—It came before Mr. Justice Bargrave Deane. A number of comments were made by the judge, who said the man had deceived the court and his conduct was outrageous, and he had been prosecuted. So that this unfortunate man, although witness after witness had been called who had known him as a boy, he had done nothing except this, cannot get his freedom and is tied to this horrible woman, and very nearly got sent to prison.

15,375. You know that in the Act itself there is that discretion?—Yes.

15,376. But decisions in the early days of the courts have fettered it?—Yes.

15,377. Your view is that discretion should be more freely exercised?—Yes.

15,378. Is that the whole point?—Yes. Your Lordship knows it is practically never exercised, very seldom indeed, although one knows of cases. I have had several in my own experience where if a woman has been driven to commit adultery the court allows her to have her decree. In fact your Lordship knows under section 31 of the Act of 1857—

15,379. You may take it it is exercised in cases of a certain limited character. It is exercised or not on the basis of the facts in each particular case. That is what you would like to see, where real justice might be done?—Yes.

15,380. I gather from what you say discretion so exercised would not tend to develop the petitioner's immorality?—No.

15,381. (Mr. Brierley.) You said you thought it would be a calamity to place the sexes on an equality in the matter of misconduct. In what way do you think it would be calamitous?—In this way. There

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are many instances of where a wife, if the husband had been guilty of an isolated act of infidelity, might be inclined to rush off to get a divorce without considering the far-reaching effects of it.

15,382. Do you think there would be real danger of her doing that if she had no special reason to complain of him as a husband in other respects?—I think amongst certain classes. Perhaps, rather, I may say amongst the poorer people they would be apt to rush off.

15,383. You know that in a great many countries, in fact, the neighbouring country of Scotland, that is the state of the law?—Yes.

15,384. Are you aware whether it has led to anything of that sort?—No. I have no experience of that.

15,385. (*Lord Guthrie.*) Do you see any reason, if it has not led to cases of that sort in Scotland, why the rushing off for one act should occur in England?—No, I do not, if you tell me from your experience that is so.

15,386. Just take it one has had to do with many hundreds of cases of wives suing their husbands for divorce on the ground of adultery, either as counsel or judge. I have never known a case where, except for repeated adultery and aggravated adultery, a wife has proposed to put herself in the position of a divorcee and lose her husband's maintenance and companionship. You do not think it would be more likely to happen in England than Scotland?—Might I ask this question before answering: Would she lose the maintenance in Scotland?

15,387. That is a proper question. She does?—Here she does not. She would get one-third of his income.

15,388. That is a very reasonable attitude to take. You think that might make a certain difference?—I do. I think a wife might be married and perhaps might not get on very well with her husband, and by her coldness drive him to commit an act, and say: "I do not want to live with you, and now I will have one-third of the income for the rest of my life." I do not see anything to distinguish between England and Scotland in that regard except on the point with regard to maintenance.

15,389. In Scotland an innocent husband is not bound to make any provision for his guilty wife. We were taking it in a wrong way. In Scotland, equally with England, the wife is entitled to her legal rights, as we call them. From that point of view your point would not arise?—No.

15,390. I am glad you cleared that up. I was taking it the reverse way. Indeed, in Scotland the argument would go further. Suppose a wife has a settlement from her husband; if she divorces him he is treated as dead, and if he has given her a right to a life rent on his death, that means he is left a pauper, so that the two cases are not so dissimilar?—No, particularly, as here, if there is a settlement and if a divorce is granted and the husband is guilty of adultery and cruelty, the settlement is varied here in the same way.

15,391. Supposing for adultery alone a wife were not to be entitled to a divorce, I suppose it would be a reasonable thing to class with it certain offences such as lewd practices?—By all means.

15,392. They are not at the present moment?—No. I think in the case of any man convicted of certain offences of indecency and that class of offence, that the wife ought to have the right—she has not the right now—of getting rid of the man altogether.

15,393. Take it in another way: suppose that there was only one Act of Amendment and that it came under the Criminal Law Amendment Act, a girl under a certain age, a kind of offence for which he could be sent to gaol, would that be sufficient?—I respectfully agree.

15,394. Or suppose it was a case of breach of trust, by a man seducing a servant in his own house after she had resisted for a long time, should not the judge have a certain discretion?—I think he should. That would come within our principle of legal cruelty in addition to the adultery, being intimate with the

servants in the house. It wants very little beyond that to make out a case of cruelty. It is degrading the wife in the eyes of the domestics.

15,395. In a case of that kind, with one act of adultery only, would that be held to be cruelty?—Not necessarily.

15,396. You think it should be?—Unless it turns out that from the shock, and thinking that a wife would be so degraded in the eyes of the servants by the husband that she became ill, and it could be proved by medical evidence that her health suffered.

15,397. In regard to insanity do you contemplate not only a period of insanity and that the patient will not recover, but also confinement in an asylum?—I think the safeguard should be that the court should be satisfied by medical evidence given orally before the court that the person practically cannot recover. No mistake ought to be made.

15,398. Would you exclude the case of a monomaniac who, say, thinks his head is made of glass, but is doing his business and residing at home?—I would exclude him.

15,399. It would involve detention in an asylum?—Yes, I meant to give that impression.

15,400. In regard to reporting, suppose in addition to the names of the parties and the result of the trial, the papers were to be entitled to publish all that is in the pleadings, and the judge's opinion, would that not be sufficient deterrent?—That might act in several ways. Very often there are matters put in the pleadings the whole of which are not necessarily referred to in court, and if the Press had the unrestricted right of reporting everything that was in the pleadings and not only, as they now have, everything of which evidence is given in court, that might lead to trouble, I am afraid.

15,401. You adhere to your view put to you by the Chairman, that it is either the present system or stop it altogether?—Yes.

15,402. You said you thought all defended cases should be transferred to the High Court mechanically if county courts got jurisdiction. Do you not think it would be sufficient to give a right of removal to the defendant, who could only remove on finding security?—Yes. He would have to make an affidavit that he had a good answer to the case and intended to fight it.

15,403. (*The Archbishop of York.*) You said you could see no alternative, in the matter of publication, between the present system and no publication at all. Have you considered a suggestion that has been made that such portions as were thought fit of the judge's comments in defended cases might be published with great advantage?—I have considered the matter, and it has occurred to me that great difficulty would arise as to how much is to be reported and how much not.

15,404. That would be in the hands of the judge?—That would lay a great burden upon the learned judge, I think.

15,405. (*Chairman.*) There is the difficulty—I do not say it is insuperable—of the question of time?—It would be a great burden on the judge to have to practically epitomise the result of his work all day.

15,406. (*Lord Guthrie.*) No, it is his opinion, his judgment, his Grace is referring to?—With regard to publishing his judgment, I think that ought certainly to be allowed in any case.

(*Chairman.*) His judgment, yes.

15,407. (*The Archbishop of York.*) That is all I mean, some publication with such an amount of detail that might be a deterrent, without being of the kind which would do harm to the reading public?—With regard to the publication of cases particularly in the Divorce Court, I think it has been said—I have heard my Lord say on many occasions—that the work there is admirably done by the reporters, and the reports are most decent in every way: but it is a particular class of paper who write this up for the purpose of selling it amongst people who think they ought not to read it.

15,408. You mean the respectable Press?—Yes. If you read the ordinary reports, as a rule I do not think anything can be urged against them.

15,409. With regard to what you call the case of an isolated act of adultery not being a ground of divorce, an isolated case is a very different thing from

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an accidental case. An isolated case may be very deliberate?—It may. Of course that is a very difficult matter. I do not know who could exactly decide that. You mean a difference of this kind: a man might arrange beforehand with someone who had taken his choice or fancy, or go out and perhaps drink too much or something of that sort, and fall into an accident of that kind rather than a deliberate act?

15,410. Would you agree that a deliberate isolated act should of itself be a ground of divorce?—I should disagree that any isolated act should give the wife the right to divorce her husband.

15,411. An isolated act, if deliberate, might be as damaging to the wife or as distressing to the wife as a series of acts?—I take the view that one act, that is to say an isolated act, comes in a different category from the act repeated over and over again. I think, as I said before, if a man is guilty of persistent adultery and neglects his wife, she certainly ought to be entitled to a divorce, but not for an isolated act. In the cases mentioned by Sir George Lewis in his evidence, where a man does not desert his wife, is not guilty of legal cruelty, but humiliates her by his infidelity and neglects her, I agree she ought to be able to get her divorce in the same way as a man can, but not an isolated act of that kind. The reason is this: I think the moral effect on a man of an isolated act of that sort is very different to the moral effect of the consequences upon a woman.

15,412. Forgive me if I press the point. It is not an act being isolated, but how far it is deliberate. Supposing a man deliberately commits adultery with a servant in the house, is not that an act of insult, quite as much as two or three instances in which, when he is not himself, he has gone wrong?—I should rather say what I said before with regard to that, that I think adultery with servants or persons in the home of the wife stands on a different basis, and if a man degrades his wife by doing that, that should enable her to divorce him. But I still say one isolated act, whether it was even, as you put it, with servants, ought not to give the wife the right to get a divorce. I am always alluding to an isolated act.

15,413. With regard to insanity you said you had 500 or 600 cases through your hands of divorce proceedings?—Yes.

15,414. Am I right in saying in the course of that immense experience you only had two or three instances where lunacy occurred?—That is so.

15,415. Might there not be some danger of increasing the dangers of lunacy in some cases if separation were added, that if lunacy were certified it might give rise to divorce, loss of husband, home, or wife and children?—That was the reason why I was rather careful to put what I thought a wide limit of five years, and then, of course, no one could get a decree on that ground without strong evidence being brought before the court that the respondent, as it would be, had been in an asylum or under restraint for five years.

15,416. My point is, supposing a person has tendencies towards insanity; a great deal would depend upon how far the tendencies could be resisted by the person. If a woman knew, if she were certified to be insane, she would lose her husband and children, might not that aggravate the chance of becoming insane?—You think it would tend to increase her tendency to insanity?

15,417. Yes, affect her nerves?—With respect, I should say that is rather remote.

15,418. I only wanted your opinion?—I should think not.

15,419. You said in answer to Lord Guthrie that you thought there ought to be detention in a lunatic asylum?—Yes.

15,420. Do you regard that as essential to the setting up of insanity as a ground for divorce?—I do.

15,421. Why should detention as such be evidence of insanity so as to make it a ground of divorce?—I mention that because I think it is a safeguard. Persons who are affected in their mind, without being sufficiently mentally deranged to be put in an asylum, may well become cured by care and kindness.

15,422. Is the insanity you accept as a ground necessarily dangerous and violent?—No. There are persons who act in extraordinary ways; it does not make it safe, although they may not be violent, for them to be at large. They do remarkable things.

15,423. Somebody might have detained in some private asylum the gentleman Lord Guthrie spoke of, who believed his head was made of glass. Would detention alone in that case be sufficient?—I think he would not be detained, because the case put was that in all other respects he could manage his affairs, which is the test whether a person should be restrained. If he has one peculiarity, that his head is made of glass, or he thinks he is walking on stilts, he would be able to carry on and manage his affairs. I think it would be dangerous to allow a man or a woman to get divorce on that ground, because they are ordinary members of the community except that they have this peculiarity.

15,424. I know a case where a woman imagined herself to be a lioness. She was detained, but was not violent or otherwise dangerous. Would you give the husband a ground for divorce in that case?—Was she capable of carrying out the ordinary duties of wife and home, and to her husband and children, or had she this one idea really predominant which seemed to dominate her so that she was incapable of thinking of other things?

15,425. You say detention is not sufficient to justify a ground of divorce, but incapacity of managing one's affairs. Would not that apply to some poor permanent paralytic kept at home, or an epileptic? Would you give a divorce in that case?—I had not considered it from the point of view of illness as opposed to an epileptic. It depends, of course.

15,426. Your very hesitation leads to my point. Does not that prove it would be an extraordinarily difficult thing for judges to determine, even on the evidence which you insist upon, what is insanity and what is not? Would you say that, if that be so, even with regard to a high standard of judges, with permanent practice in the matter and long experience; it would be even more so if jurisdiction in divorce were extended to county court judges?—I entirely agree with that, although in my evidence I limited it to saying only undefended cases should be dealt with.

15,427. You look with some alarm upon a large number of judges all over the country dealing with questions of this kind?—I would, certainly.

15,428. There is one point of practice I want to ask you upon. You have a great deal of practice in the court. Have you any opinion as to whether a wife who has obtained a divorce from her husband and has married again afterwards should be entitled to continue to receive maintenance from the husband whom she has divorced?—I think there ought to be no hard and fast rule in the case of a wife who has maintenance from her husband, she having married again. If she marries a man possessed of large means and the husband is in a comparatively small position, and the one-third he has been allowing her is a great drag upon him, he ought to be able to apply to the court to vary it, and the judges would be able to exercise discretion and say there has been a divorce, perhaps the man has married again and the wife has married considerable money, I think it ought to be altered.

15,429. (Sir George White.) About the publication of reports, I gather you do not think there is any great fault to find with regard to reports so far as they consist of details of the proceedings of the courts, but that the fault was the garnishing of the reports by certain papers?—Yes.

15,430. (Lord Guthrie.) In regard to the husband being disentitled to his divorce if it appears he has committed adultery, do you know if there is any other department of the law in which a similar principle is applied, or does that stand alone? Take a criminal case, a private prosecution for theft; it is no answer to say the prosecutor has been guilty of some other theft?—No.

15,431. Do you know where the principle of recrimination is applied? I am assuming he comes into court with clean hands so far as the particular charge

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is concerned, that he has not connived at the adultery? Do you know where that principle is applied where in another matter altogether, so far as the present charge is concerned, he has himself been guilty?—No, I do not. Of course in other branches of the law, the particular example you have mentioned and in others, the mere fact of saying a person has committed other offences at other times has only relevancy as to his credit.

15,432. (*Chairman.*) Is that quite exhaustive, because if a party commits a breach of any mercantile contract he can be sued for breach of it, but the defendant might sue for a previous breach?—Yes.

15,433. You draw a distinction between a single act of adultery on the part of the husband, and when defining it you term it "persistent cruelty." Where do you draw the line? One act I can understand, but supposing there were two with an interval between, say a year or two apart, or three or four years. When do you get away in principle from the one act into the persistency?—I leave it at the one, because I think if a man has, so to speak, a warning that he has done wrong and his wife has found him out and it has caused her pain and grief, it may be that it is a warning to him as to what may happen, and he may break up his home and the happiness of his children if he persists in it.

15,434. Can it depend on the discovery? Supposing the wife discovers after a long interval there is another

establishment somewhere else, would that fulfil your idea of persistency?—Yes.

15,435. Supposing that has not been discovered, and that so far as her own feelings upon discovery are concerned it has not dawned upon her?—I do not think I appreciate your Lordship's point. I do not put the question of the discovery, although I take it the point will not arise unless the person is discovered. Supposing a man commits one act of adultery and is discovered with regard to it, and although he has been discovered and although he knows the grief it has occasioned to his wife he then commits such an act again, I think then that the wife ought to be entitled to say, If I choose I will divorce you, because although he has had the lesson before and knows the unpleasantness and grief he has caused me it has been no lesson to him, and now I will take the steps I think I ought to.

15,436. Is there any difference between that case and the case where there are several acts committed, for instance, as you illustrated it, by a trip abroad. Is that one act or a dozen? Take the case you gave, which was such a very interesting case. Is your view that the taking of the person abroad in such a case as that is to be treated as one act?—I should be inclined to treat it as one.

15,437. We at once get into great difficulty unless we draw the line at adultery altogether very often, or make it something special, as it is under the statute. However, you have given us your view clearly, and we thank you for your evidence.

Mr. JAMES JONAS DODD called and examined.

15,438. (*Chairman.*) You are a solicitor and borough councillor of West Hartlepool?—I am not now a councillor. I have left West Hartlepool. I am now practising in London.

15,439. At the time your proof was drawn up you were a borough councillor at West Hartlepool?—Yes.

15,440. Have you had many years' experience in separation cases?—Yes.

15,441. You have prepared a proof of some length, but I rather gather since evidence has been given before us you have concentrated it into a shorter memorandum, and you desire to be examined on that?—If you please.

15,442. First of all, you propose certain things should be abolished altogether. Will you tell us what they are, and why you would abolish them?—The matrimonial jurisdiction of the Divorce Court and of the magistrates; the Divorce Court because I would give it all to the county courts, and the magistrates because I do not think that the atmosphere of a police court is the proper atmosphere for civil or quasi-civil cases.

15,443. You would transfer the whole of that jurisdiction to the county court?—I cannot see where you are to draw the line. It cannot be on the question of the means of the parties. If you are going to give jurisdiction to the county courts I think you must take it away from the Divorce Court in London.

15,444. Would there be any advantage to be derived in that, as far as London is concerned?—I think all cases ought to be instituted in the county court altogether.

15,445. Why deprive the suitor of going to the High Court if he chooses?—Because of the cost of it. Besides, if it is reasonable a case should be taken in the county court it is reasonable that all cases should be taken there.

15,446. Is that equally true of other branches of work?—I am inclined to think there ought to be a great extension of county court jurisdiction. In some cases the difficulty of the case might make it necessary to try in the High Court. There might be jurisdiction to refer the case to the High Court for trial.

15,447. You propose the abolition of actions for restitution of conjugal rights?—So far as I can understand the purpose of actions for the restitution of conjugal rights, it is only to make out a case of desertion, and if that is so I think a mere registered letter demanding return to conjugal rights would save perhaps 100% in costs.

15,448. You propose to abolish claims for damages?—That is in breach of promise cases. I think a large number of marriages are compulsory because a man is afraid of an action for breach of promise being brought, and I think a compulsory marriage is one of the greatest evils that can possibly exist.

15,449. Pauper procedure in divorce you would allow on some system?—No, I would abolish pauper procedure, because if the jurisdiction is given to the county court and the wife is charged no court fees, there would be no necessity to have pauper procedure, except in appeals, of course.

15,450. In general you would allow all divorce to be discretionary and not as of course?—Yes. For instance, take the case that has been mentioned by Mr. Newton, the case of an isolated act on the part of the husband. I am inclined to think there are circumstances in married life that may absolve the husband from any obligation to his wife. I think that was so in the case he has mentioned. Here was a drunken wife who misconducts herself with other men. Is that husband to be barred from the right of intercourse with anybody else if he chooses? I do not think any moral law could make such a restriction.

15,451. By "discretionary" do you mean discretionary on certain grounds or a general discretion?—A general discretion. Supposing the wife commits misconduct. Now that is a ground for divorce, and it is assumed the divorce should be granted. I am not sure it is necessary in all cases that the divorce should be granted. There may be circumstances in which the judge would consider the misconduct explainable; therefore I would make it discretionary in all cases.

15,452. You say a separation agreement ought not to be a bar to relief?—Your Lordship understands that difficulty. In the police court if there is a separation agreement the magistrates are unable to give any order for separation. In many cases it happens the husband has stopped paying the alimony agreed upon, and yet there is no remedy. Then in the county court there is no remedy, because it is held that separations are against public policy, and unless there is consideration for the agreement it cannot be enforced in the county court. I had a case like that some time ago where a wife had no remedy at all, neither in the county court nor in the police court.

15,453. Will you tell us the other general points you urge?—(1) No divorce to be given at the instance of a party guilty of any matrimonial offence, unless such offence has been condoned or condoned to by the

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conduct of the respondent. (2) No relief to be given to a husband who has failed to provide for his wife any other home than residence in the house of the parents. I wish to emphasise that. There are many cases where a wife has been compelled to reside with her husband's parents, and in separation cases especially it does account for a good deal of trouble. (3) On the question of collusion, at present, as I understand the law, it means that if there is the least desire on the part of both parties that there should be a divorce, and they are agreed as to its necessity, that is called collusion. But I would limit it to evidence being collusively manufactured; and I have given in my proof an instance which I think is a very good instance of the difficulty this collusion doctrine causes. (4) Furthermore, the wife ought not to be compelled to leave her husband's roof as a preliminary to taking action. (5) Then children born in wedlock should be deemed legitimate, notwithstanding a decree of nullity. Then as to the jurisdiction of county courts, I say in my proof, all county courts to have jurisdiction without limit in all matrimonial causes, including the revision, rescission, and enforcement of separation agreements. The court to have jurisdiction to deal with all marriages where either of the parties is ordinarily resident within the jurisdiction, and notwithstanding their places of domicile, provided the marriage was contracted (or reasonably believed by the applicant to have been contracted) in accord with the law of the country where it took place. That is intended to meet the domicile difficulty.

15,454. I do not know that we need go through the details of procedure. So much of that depends upon what we decide in the end?—That is so. The next point is as to nullity decrees. I want to meet the difficulties of the ecclesiastics who object to divorce by suggesting some additional grounds for nullity of marriage. So far as I can understand, the Church does sanction decrees of nullity of marriage, and I believe there are certain cases where it should be granted. The additional grounds for nullity decrees which I suggest are (1) procuring marriage by fraudulent misrepresentation as to income, station in life, family, or antecedents, provided co-habitation ceased and application filed within three months of the marriage. The classic case is that of the Lady of Lyons in Lytton's play. (2) The next additional ground is the birth of a child not of the husband within six months of the marriage, provided co-habitation ceased and application filed within one month from the husband's knowledge of the birth. That is to meet the Poulett case. (3) Then, co-habitation for five years during the period of child-bearing without a single birth or miscarriage occurring, provided the husband makes suitable provision for his wife till her re-marriage. That, I think, is a most important matter, because the sole purpose of marriage is the begetting of children, and if children do not result it is a very ghastly thing that the people should be tied together. I know of childless marriages which are to my mind too horrible to think of; it is no marriage; and if it is no marriage there ought to be a decree of nullity. Then additional grounds of divorce: (1) Adultery of the husband (a) in the conjugal residence, (b) notorious and open adultery, (c) under circumstances of indignity to the wife, (d) under any circumstances of aggravation. (2) The communication of venereal disorder; that should also be a ground for divorce. (3) Then absence, unheard of for five years, giving an innocent presumption of death; (4) desertion by either, persisting for two years; (5) separation, either voluntary or by order of the court, persisting for two years. That meets the point Mr. Newton was mentioning, judicial separation. (6) Then detention in a criminal lunatic asylum. You have in my notes a very strong personal reason why that should be a ground for divorce. I do not know whether your Lordship read them. My wife killed my four children just lately and is in a lunatic asylum. I want her back and hope to get her. I think she has recovered, but it is a terrible thing that a man should be tied against his will to a criminal lunatic. It would be an awful thing for a criminal lunatic to become a mother of children afterwards unless she

were completely cured. (7) Then, confinement in a lunatic asylum for not less than three years before attaining the age of 50, where the lunacy is certified by two doctors and the medical superintendent of the asylum to be incurable. I think that divorce on the ground of lunacy should only be given in a case of a person confined in an asylum. I do not think that mere eccentricities in the household could be dealt with as lunacy. (8) Incurable epileptic lunacy is also a ghastly thing. It comes out in the children, and I do not think people should be tied together if there is a risk of anything coming out in the children.

15,455. Is that so where there is confinement in an asylum?—Epileptics are sometimes at home, but if it is found that a man is a chronic epileptic he ought not to be allowed to breed. (9) Then habitual crime; (10) conviction for indecency before the age of 50; (11) sentence of penal servitude before the age of 50; (12) wilfully causing or attempting to cause grievous bodily harm to either the spouse or the children of the spouse ordinarily resident in the conjugal residence; (13) wilful and persistent cruelty; (14) habitual and irreclaimable drunkenness; (15) birth of two congenital degenerates in succession. I have emphasised that in my proof by this: I went into a man's cottage a while ago, and found four children lying in cradles. I thought they were babies, but they were grown up. The man had two children who were normal, but these poor people had been living like that for 20 years, and it was too horrible to think of. When people have already had two deaf and dumb children or congenital degenerates one after another they ought to be stopped breeding.

15,456. It does not follow that they need be separated by divorce?—I think they ought to have freedom to take other partners. I do not know who is at fault.

15,457. May I summarise what you have pointed out? You have put down a certain number of causes which you consider render married life practically impossible?—That is so.

15,458. Secondly, some causes which render it extremely undesirable in the interests of the State that people should propagate offspring, and in that case you would allow divorce. That is the summary of it?—Yes.

15,459. As additional grounds for separation orders you include all those?—Yes. Of course a separation order does not mean divorce.

15,460. May I take it those are substantially the same?—Substantially the same, except this, that adultery of the husband in any case I would make a ground of separation, even an isolated case.

15,461. Why do you differentiate separation from divorce for a single act?—I rather hope in separation the husband and wife might come together, whereas divorce discharges all hope. Then, as a further ground for separation, take the case of loathsome disease, I think a wife ought to be freed from her husband in such a case if she chooses, and also in cases of insanity, and, I think, where cohabitation can be proved to be prejudicial to the wife's health. There are husbands who insist on marital rights under such circumstances that the wife would be justified in asking the court for relief. Then on the point of additional proofs of adultery, I would add conviction for being a disorderly prostitute, or assisting in the management of a brothel. (I do not know whether that is so already, but it ought to be so if it is not.) Also notorious and constant association with persons so convicted. Then, additional proofs of cruelty; (1) any of the grounds for divorce; (2) conveying a venereal disease or like disorder to the wife. That at present must be done wilfully, but it seems absurd to suggest that a husband who conveys such a disease is not conveying it wilfully. (3) Then, obscene behaviour towards anybody in the conjugal residence or in the employ of husband or wife; (4) frequent and wilful use of obscene or threatening language in any public place or in the conjugal residence within the hearing of children capable of understanding it, or of any other persons; (5) frequent drunkenness; (6) threatening to murder. It is a horrible idea that a wife cannot get a separation on account of threats even though the man keeps a knife

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under the pillow. (7) Then, imprisonment on conviction without the option of a fine; (8) compulsion or incitement of the wife to become an accessory to any indictable offence. I know a case of a man sent to penal servitude who had compelled his wife to assist him with forgery. I think it wrong that a wife who has done such a thing under compulsion should not be entitled to a separation. (9) Then a calumnious accusation of adultery made in the presence of witnesses and without any extenuating excuse. That happens continually amongst the very poor. I am frequently consulted by women whose husbands have accused them of being a whore (the usual result of a forced marriage). A wife ought under those circumstances to be protected. Then on the question of alimony, (1) an order to be enforceable by warrant within seven days after order made; (2) no imprisonment for alimony if the husband has been *bonâ fide* out of employment. That is another thing I want to emphasise. At present, whether the husband is out of work or not, his wife can have him arrested and sent to prison for one or two months. That seems unreasonable. If a man cannot earn money he ought not to be sent to prison. The doctrine as to imprisonment for debt has been in the county courts that there must be contempt of court, that the man has had the money and will not pay; but in the police court, in cases of separation, a wife can get the husband sent to prison whether in work or not.

15,462. (*Sir George White.*) Can she?—It is done. I have seen it over and over again.

15,463. The magistrates require some proof that the man has had means of earning money?—I am dealing not with what is done by stipendiary magistrates, but by ordinary benches. My experience of ordinary benches is that I have seen many men sent to prison who have been out of work.

15,464. (*Chairman.*) Perhaps they would not work if they could?—I have known cases where a man has honestly tried to get work and has yet been sent to prison. (3) Then, imprisonment for arrears of alimony to be with hard labour if the judge think fit so to order. (4) Neither imprisonment nor bankruptcy to cancel arrears of alimony. It is ridiculous that a man can go to prison and get rid of his debt. (5) Then, instead of imprisonment, power to order payment of alimony or damages out of the defaulting party's wages or estate direct. That has been mentioned already. (6) Then, power to order payment of alimony through the court; (7) alimony not necessarily to cease on the wife's death or annulment of a separation order, but to continue (in full or reduced) for the benefit of children under 16 that the husband is legally liable to maintain. That is a most important matter. I do not know whether it has been mentioned here yet, but at present if the wife dies the alimony ceases, although there are children still to be supported. Those children may be in the custody of the grandparents. It is only right that the money should be continued so long as they have to be maintained, because if the husband is not fit to have the children before his wife dies, he is not fit to have them after. (8) Then, alimony not to cease on the adultery of the wife if such adultery has been conducted to by the husband's failure to pay alimony, or procured or connived at by the husband. I have mentioned in my proof an instance; the West Hartlepool Superintendent of Police has told me he has known of men sending their mates to their wives to persuade them to commit adultery in order that the husband may go to the court and get rid of an order. Then with regard to penalties, persons found guilty of adultery, persistent cruelty or desertion, or held by the judge to have committed wilful perjury in matrimonial causes, also husbands who connive at or procure the adultery of their wives with intent to obtain a divorce or annulment of a separation order, to be liable to immediate imprisonment for not more than two years with or without hard labour, such imprisonment in the case of a wife to cease on the husband agreeing to resume cohabitation. I believe that is the French law. Then, divorcee to revert to her surname prior to the marriage, if in fault. That is the case of Lady Cowley.

15,465. You cannot stop people calling themselves what they choose?—I think a guilty wife ought to be forbidden under penalty to keep the name. Then, power to the court to declare that the spouse against whom divorce or separation is decreed shall thereby forfeit all benefits which may have been conferred by the spouse either by settlement, will or gift, also any benefits by the intestacy of either; no re-marriage of any person found guilty in divorce to be valid for three years after decree absolute, except by leave of the judge granting the decree.

15,466. What do you found that upon?—That is the French law, and I think it is very good law. A large number of people get a divorce in order that they may get re-marriage. I would stop adultery for the sake of getting a divorce.

15,467. There are cases where persons are found guilty of adultery, and the result is a child being born. Some have suggested shortening the term of the decree absolute in order to give that child a chance of legitimacy. Your view would prevent that?—Not necessarily. I would revise the law of legitimacy.

15,468. You think if there had been a re-marriage that should legitimise prior offspring?—Yes. I do not think that adultery should be allowed as a pastime or means of securing freedom. At present in the divorce law that is what it is to a large extent.

15,469. You would interpose an interval?—Yes.

15,470. Between the divorce being made complete and the party re-marrying?—The guilty party re-marrying. After a decree any party molesting the other party unreasonably to be liable to damages, or fine, or imprisonment, or reduction or cessation of alimony. I have in mind a singular instance where the husband is being pursued by the wife after a separation order in an outrageous way. She calls at every house where he lives and knocks at the doors and tells the neighbours about him. She went to his employer, got him discharged, and brought him up to the police court and got him imprisoned for not paying arrears of alimony he was unable to earn because of her conduct.

15,471. You would give power to the judge to stop it if they did not behave properly?—Yes. Then on the question of appeals, all appeals to go to quarter sessions, with final appeal to the Court of Appeal. Bastardy appeals are taken at quarter sessions, and I do not see why matrimonial cases should not go there. If the Divorce Court in London were retained, that might be retained as a court of appeal, but the quarter sessions is what I suggest. Then, alimony not to cease on notice of appeal, except by order of the court of first instance; court of first instance to be empowered to order provision for the wife's costs of appeal; no appeal by the husband to be allowed to proceed unless alimony has been paid up to date; a conviction for assault or habitual drunkenness not to bar the re-opening of the facts on appeal; on appeal, orders may be varied without going back for a new hearing.

15,472. There is a good deal of detailed suggestion in your proof which will require careful consideration. There is only one point I do not see why you should press. Why would you abolish the High Court's jurisdiction as at present?—I put it in this way. If it is possible for county courts to grant divorces there should be no difference between rich and poor. All people should be compelled to go to the county court, no matter what their income or means.

15,473. What advantage do you derive from that, with people perfectly able without any difficulty to provide for the expense of the High Court trial?—The court ought to know no distinction between rich and poor. It ought not to know what a man's means are.

15,474. Why should the present system be interfered with so far as people are able to use it?—I do not see how you could draw the line.

15,475. Your suggestion, if logically carried out, would abolish the High Court for every purpose, and send every class of case to the county court?—Some day I hope that will be done.

15,476. That would require consideration before you abolish the higher tribunal and send people all

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down to a lower one uniformly?—I think most actions could be settled by arbitration without going to court at all, but that is another matter. I believe half our judicial procedure could be done away with.

15,477. You cannot send divorce procedure to arbitration?—No, but I still hold the county court would be sufficient.

15,478. I forget, but was your name suggested to the Commission by anyone from Hartlepool?—No, I simply made some notes and sent them up to Mr. Barnes originally, and he asked me if I would furnish a proof. The subject was one in which I interested myself—that is why.

15,479. (*Mr. Brierley.*) On what principle do you make the quarter sessions the Court of Appeal from the county court judge? The county court judges would rather protest against that?—The only drawback is this: for poor people to come to London on appeal is rather a big business, and I thought I would give the remedy in their county, which would be more convenient, considering the chairman of quarter sessions is usually a barrister and is assisted by counsel.

15,480. Occasionally he is the county court judge?—Sometimes that is so. That may be a drawback.

15,481. (*Chairman.*) I have to thank you for your evidence. I think you have gone through all you wish to say?—Yes.

Adjourned.

Winchester House, St. James's Square, London, S.W.

TWENTY-THIRD DAY.

Wednesday, 1st June 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace The LORD ARCHBISHOP OF YORK.
The Right Hon. THOMAS BURT, M.P.
The Hon. LORD GUTHRIE.
Sir WILLIAM R. ANSON, Bart., M.P.
Sir LEWIS T. DIBDIN, D.C.L.

Sir GEORGE WHITE, M.P.
Sir RUFUS D. ISAACS, K.C., M.P. (*Solicitor-General*).
His Honour Judge TINDAL ATKINSON.
EDGAR BRIERLEY, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

The Right Hon. LORD ALVERSTONE called and examined.

15,482. (*Chairman.*) Lord Alverstone, I think you have been invited by the Commissioners to give evidence on the questions being considered by this Commission?—I said I should be willing.

15,483. And you have kindly responded to the invitation?—Yes.

15,484. Before asking you about any particular point, may I just get it on the notes that for a long time before you held judicial office you acted as Attorney-General?—For 12½ years.

15,485. In that position you came in contact with the King's Proctor's office?—Very directly, having advised or refused upwards of 300 interventions.

15,486. That bears upon any views connected with the office. Will you give us your views with regard to the jurisdiction of local courts, if any?—I should like to say at the root of that lies the question of whether we are going to alter the law as to the grounds of divorce. I will come back to that afterwards, and deal with the question of local courts now, which will be just as convenient. If the law is to remain as it is, namely, that the husband is to have the right of obtaining divorce for adultery alone, and the wife must prove adultery and cruelty, or desertion, or something else, in order to justify getting divorce, I am strongly of opinion that the jurisdiction ought never to be entrusted to inferior courts. Whether or not any alteration of the law in favour of the wife should make any difference, I would rather deal with later on; but dealing with the jurisdiction or the grounds of divorce as it stands now, I think it would be most serious to entrust it to local courts.

15,487. To an inferior court?—I think to a local court, or to an inferior court.

15,488. Will you give us your view as to how the Commission might best recommend the difficulty to be met which has been put by a great number of witnesses

before us, of giving the poorer classes a chance where at present they are debarred by expense?—That is rather a question of the remedy or the way of dealing with the evil which does exist, no doubt, that poor people have not the same advantages as the rich. My objections to the local tribunal go far beyond any question of remedy in that respect. I would rather state my objections to the local tribunal independently of the remedy. I will give you my suggestion as to the remedy in the case of the poor, which is quite one branch only of the larger question of whether divorce should be allowed to a local tribunal.

15,489. Will you kindly treat it in your own way?—I would like to say both from a lawyer's point of view and from the point of view of a public man, a man of the world, I am most unwilling that divorce should be made what I may call easy, and while I wish and intend, as far as I am concerned, to give the same advantages, if they be advantages, to the poor as to the rich, I do not wish to do it by means of making divorce easy. I think the only justification for the way in which the divorce laws have been worked since the time they were instituted, which I can just remember, is that they have been administered by a court in which the whole country has had the most unbounded confidence, originally by one and now by two judges, who have had experience as a rule for long periods of years, 10 or even more years. I should look forward with the greatest apprehension to giving this jurisdiction to any large number of people. I think the only reason why people have tolerated the Divorce Court to the extent to which it has gone under the law, has been that its administration has been so absolutely uniform, or at any rate as uniform as it could be having regard to the fact that different men at times take different views. I think the questions which have to be decided on the law as it stands are so difficult and complex that they ought only to be dealt

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with by men of experience, and to say that any competent judge, however competent to deal with the ordinary hundred and one questions of law that come before him either as county court judge or magistrate, has sufficient experience, is to shut your eyes to the really difficult questions that arise. If it was adultery only, that is to say if you were going to say for adultery by the husband or by the wife you would be willing to grant divorce, the question would be a much simpler one. I personally should have no real objection, either as a lawyer or public man, to a simple question of adultery or the issue of adultery being tried by a county court judge, and still less where it is an undefended case; but really we ought not to look at divorce from that standpoint alone. The wife as at present constituted can only get divorce by adding cruelty or desertion to adultery, or something else. I need not deal with the particular kinds of adultery which, under some circumstances, give a right to divorce. I need not appeal to you, Lord Gorell, because I know that every member of this Commission appreciates that questions of cruelty are very difficult questions to decide. You have to deal with the conduct of the other spouse, and the conduct of the wife sometimes who has been aggravating and irritating to the last extent, and to deal with some standard which people can uniformly adopt of that which ought to be regarded as cruelty. Then take condonation, that is a most difficult question, and a question upon which I think only those experienced in the Divorce Court could make a good judge, as every judge must learn by experience. Then there is connivance, although that is less difficult to deal with, but at the same time it is still difficult. From the point of view of the issues to try, as long as they are contested, and as long as they are involved in the rights of the parties, I have the strongest objection to anything but a strong and experienced court dealing with those questions.

15,490. Would that permit, according to your view, of undefended cases being taken in the county court?—If it was an undefended case for adultery only; that is to say, if all you have to consider is whether the particular spouse has been guilty of adultery, a considerable portion of my objection—not all, but some portion—would be weakened. That is why I am approaching the question from the jurisdiction as it now stands and the rights as they now stand. I am coming to another part which affects adultery also.

15,491. Would you assist us in this: I gather that your view would be, having regard to the generally important nature of the subject, the High Court should retain its jurisdiction exclusively, except possibly with the qualification you have given?—I should suggest it would be a judge of the standing of the High Court.

15,492. Could you assist us a little further. How would you, with that view, meet the difficulties which we have had presented to us over and over again, of poor people not being able to avail themselves of the High Court?—I am afraid I must ask you to let me postpone that for the moment, because I have other objections to jurisdiction independently of that. I will not forget it. I have thought most carefully over the way, from my point of view, of helping the poor.

15,493. Will you take the objections first?—I will come back to it. I have not touched upon what I think is the greatest objection, and that is what is called collusion, what is really a good deal mixed up with connivance—not with condonation as a rule, but with connivance. I am afraid I differ very markedly from many witnesses who have been called before this Commission, and that is why I felt it right to say I am not speaking of this subject without experience. During the 12½ years I was Attorney-General, as I mentioned, I had no less than between 300 and 400 interventions to consider. They come before the Attorney-General, and he has to sanction them. It was a branch of the work in which I thought it my duty to take extreme care, and I never allowed the King's Proctor to intervene unless I thought he was certain to be successful. Lord Desart is in the room—he may correct me—and I do not think the King's Proctor was unsuccessful in an intervention I sanctioned, but I know that the

office thought that I was unduly strict in not allowing intervention unless it could be proved. I mention that for another point as to the position of the King's Proctor. I formed the most distinct conclusion that a very large proportion of the cases that came before me were cases in which the petitioner ought not to have obtained relief.

15,494. Will you tell me whether that was on the ground of collusion or the petitioner's own conduct?—Largely on the ground of collusion, and still more upon the ground of his own conduct. I do not think the King's Proctor, as his office is worked now, can find out one-tenth of the cases in which there has been misconduct of the petitioner, and I should say he can only find out a small proportion of the cases in which there has been collusion. I came to this conclusion long before I had got to the end of my 300 cases, and I watched them extremely carefully in consequence of the view I have taken. In the first place, I found in the great majority of cases where it turned out there had been collusion, the wife was the person who was charged, because the husband not unnaturally would not plead guilty to cruelty or desertion, and his adultery would not effect the object the people had in trying to get a divorce; therefore, it was a very common thing for an undefended case to be a case of the wife's adultery. I also came to the conclusion in a very large number of cases the husband was conscious of it, knew of it, and very often induced it, and in a smaller proportion of cases, I think the whole thing was untrue. I think the court had no means of investigating cases put before it where the story told of the adultery was not true, but the important thing is that in a very large proportion of those cases, upon the facts, whether the King's Proctor could prove them or not, I had not the slightest doubt. In a great many cases it was proved, so that the petitioner did not resist the intervention and gave way at once; but in a great number of cases it was proved that the husband or wife, principally the husband, had been guilty of misconduct, and, therefore, if the real facts had been known, the parties would not have been entitled to relief from the court. I am quite satisfied that if we are to administer the law of divorce with advantage to the community and with justice to the people who are entitled to get divorce, as far as possible that ought to be stopped, and I look with the greatest dread to local courts and local courts all over the country, because I am satisfied, even worked as it is now, in getting to the knowledge of the King's Proctor as it does, as to which I would rather not express an opinion, which may not be founded on sufficient experience, that the King's Proctor could not effectively watch the cases as he can now.

15,495. Might I ask upon that, is it not as easy for the King's Proctor to investigate a case afterwards, which he always has to do whether tried here or there?—It depends what you are going to do. If you are going to have a shorthand note taken in the county court, if you are going to have the same publicity in the county court as you have now, and if it be the fact that in a number—I do not know the number, 20, 30 or 40—of courts in the country, the King's Proctor tells me he can as effectively watch, I am answered on this point. All I say is that, as far as I was able to judge in this very large number of cases, I do not believe he could effectively watch them. The means of getting information now, I think, is utterly insufficient, and my own feeling is that the evil must be aggravated if you have county courts or any local courts all over the country.

15,496. The reason I ask that is this: the King's Proctor does not watch the trial; he obtains his information from the shorthand note, and from any suggestions made outside?—I do not think he does get it from the shorthand note; he gets information from some quarter or another, I daresay, probably Lord Desart will say in a score of ways, and then he applies and gets the shorthand note, but all I mean is that if this is going on day by day in a number of courts in the country, I do not see how he is to get the same information. I am not putting it so high as to say I am right in that, but if my fear that the cases could not be properly watched is correct and well-founded it is

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an insuperable objection to having local courts. I wish to call attention to the fact, from some motives they have not explained, witnesses have been before the Commission who said they wished to do away with the King's Proctor altogether. Why, I cannot understand, unless it is thought there is to be a freedom and licence in divorce, which even the most strong advocate has not contemplated. As I have said, from the collusion point of view and the point of view of conduct which is not collusion, strictly so-called, of people who have so conducted themselves that they ought not to get divorce, I cannot see and I cannot think that it would be desirable to have these trials take place locally, where there must be less publicity with regard to the individual. The case is heard in a very different way, and as I have already said, by judges who have not the experience of those who preside in the Divorce Court.

15,497. May I point out two things? First, the watching by the King's Proctor is not at the trial?—I agree.

15,498. The other is a point made by some of the witnesses, that persons are more apt to be checked by the case being heard in their own neighbourhood than by coming to London where nothing is known about them?—That is perfectly true, if you are dealing with some important case that will be tried at the assizes, or something of that kind, but it is not true of the county courts, and nobody, I am sure—the very experienced judge of the county court who is hearing me would not—would say it is true that there is such publicity. One has only got to sit, as I have sat for 10 years, on appeals from inferior courts, where constantly the county court judge's note has been very insufficient, and when one asks if there is not a local report of a paper, sometimes they are able to produce a report of a local newspaper which most advantageously supplements what is put before the court as to what went on in the county court, but it constantly happens there is no report.

15,499. Would the difficulty be met by there being a shorthand-writer at each place?—It would be met to a certain extent, because you would get the materials for the King's Proctor if his suspicions were aroused. To that extent you would get it.

15,500. You would get the same materials as you get at present?—I know from experience as a rule the King's Proctor, when his attention is directed to a case, does get the proceedings from the Divorce Court and works upon them, or makes them the base of his inquiries. That does not terminate my objections to local courts. I have been dealing with it from the divorce point of view, and I say, if I may summarise what I have said, as far as the issue to be tried involves these very difficult considerations of cruelty, condonation and connivance, I wish to have a judge of the very highest experience, although nobody has a greater respect than I have for the county court bench. That I need not say, but I know their work and have spoken highly of it. If you take a selected county court judge and train him up to do divorce work, he will get the experience.

15,501. Would that general objection be met by selected judges from the county court?—It depends upon how many. You at once get into a difficulty when you are going to deal with the financial question, which I hope to deal with presently. There is not much difference between telling a person to go to Liverpool, Manchester or Leeds for the purpose of divorce, and going to London in some cases. If you reduce the number of judges you remove a part of my objection, but not altogether.

15,502. Are there any further objections?—Yes, there are. I am sorry to say I think the county court is wholly unsuited from the point of view of the advocate and from the point of view of the jury. First, as regards the advocate, I practised more than I liked in the Divorce Court at one time; but I am satisfied you, Lord Gorell, would say that the trained Divorce Court bar is of the greatest assistance to a Divorce Court judge, not only from the point of view of honourable conduct, for which every barrister or solicitor has a reputation, but from the point of view

of experience. It is the most invaluable assistance. Why do people get better judges after a time? because they learn to appreciate and value the labours of the advocates before them; and to say a county court judge will get that assistance from a solicitor who only for the time being will be the advocate in the Divorce Court cases, is going beyond what can be expected. I have the greatest respect for the solicitor advocacy in the county court, but, at the same time, I think no one would like to say Divorce Court proceedings ought to be conducted by people who have practically no experience of Divorce Court cases except the one they are engaged in. With regard to juries it is a very serious question. We have a great many complaints with regard to county court juries now, and I do not know whether, if the county courts are going to have jurisdiction, you are going to take away the right of appeal on questions of fact. At present there is no appeal.

15,503. The suggestion has been made that there should be an appeal both on law and fact to the Divorce Court?—I only mention it because I am dealing with county courts as they stand. I think that the judge cannot have the proper experience. I think the advocates are not the class of advocates who ought to conduct divorce cases. I do not think they ought to be conducted by men of less experience than barristers, and I think juries are not the class of men who ought to try them. In many cases the congestion of business would be most serious. In many cases the putting in on the top of the present work of a county court judge in the places that have been mentioned, like the big towns, this divorce work, would be depriving the people for whom the county court was intended of their proper tribunal. I hope it will never be thought these divorce cases can be heard like an undefended case.

15,504. The suggestion that has been made is that one of the body of judges of the county court should be selected to take a district and take his court at definite times and places, so as not to mix it up with the general common work?—I am afraid that would not meet my difficulty.

15,505. Does that finish your objections?—I think it does. I should like to add—I do not want to go back to the King's Proctor—a statement as to the importance, to my mind, of the control of the King's Proctor. I have said I am unable to understand on what ground people who act as solicitors in divorce cases think the King's Proctor ought not to have any jurisdiction.

15,506. Perhaps I may put it in the way it has been suggested, that it is with a view to the law of recrimination being permitted, that is to say, the petitioner is debarred by his own misconduct in a large class of cases from obtaining a decree, and some have suggested that that is all the more reason for granting divorce, because life between the parties is absolutely impossible?—We are embarking at once upon another question, that is the alteration of the law, and that is why I have given my evidence and views with the law as it now stands. If it be the fact that a husband who has committed adultery ought not to be entitled to obtain a divorce on the ground of his wife's adultery, it is essential to have somebody in the nature of the King's Proctor, because he will do his utmost to keep it back. If the wife is willing, she will do all she can to keep it back. If you remove some officer who is to have the power of intervening in cases in which there has been an abuse of the court, by divorce being obtained when it ought not to be obtained, you will enormously increase the temptation to perjury.

15,507. How would you meet the objection that has been put by some witnesses, that the disadvantage to the State of keeping two people both guilty is such as to make it undesirable they should remain tied?—That is a consideration of what the grounds of divorce should be. My opinion may not be worth much, but I will express it. It does not touch this point. I am dealing with the thing as it stands.

15,508. I follow that?—I will not forget that. I desire to point out that if there is no officer it is certain that a very large number of decrees, or the number of decrees which ought not to be made, will be increased.

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There ought to be, in the public interest, and in the interest of the administration of the law, additional facilities given to the King's Proctor to see that the law is observed, just in the same way as in any criminal case if we find there has been a miscarriage of justice we endeavour to put it right. I notice, with regret, that there has been a recent decision that the King's Proctor, if he fails, has to pay the costs as an ordinary litigant. It seems to me that is in the teeth of the practice of the old days, and in the teeth of what is desirable. If the King's Proctor has intervened improperly, by all means make him pay, but I can say that sometimes, not infrequently, the King's Proctor has failed because witnesses have been got away or have not been available, whose statements were before him, or witnesses have gone back from their previous statements. I speak with deference to your great experience. I think if the judge of the Divorce Court says the King's Proctor has intervened improperly, that is a right case in which to say he should pay the costs; but simply failure on the part of the King's Proctor, involving the penalty of his paying the costs, would be a great encouragement to these people who do not dread the King's Proctor now as much as they ought to do. I think that disposes of it all.

15,509. Other questions will bring it out if you have omitted anything. Will you meet the point which I put too early? What is your suggestion to meet what apparently many think is a great injustice to the poor?—All the trend of modern thought, and I think the developed opinion of those who have considered it, is in favour of relieving the expense to the pauper petitioner. In my judgment, a pauper petitioner who has got a good case for divorce ought to be allowed to proceed *in forma pauperis*, not only by being relieved of court fees, but, if necessary, by being assisted to bring his witnesses to the court. What is happening now, it really is not far off a criminal offence—I do not want to put it so high, because I shall get into controversy with people who think divorce ought to be made easy; but all I say is, that there is not so much difference, from a lawyer's point of view, or, I think, from a political economist's point of view, between anybody who breaks the law in regard to the matter of divorce and anybody who breaks the law in minor criminal matters, or some important ones. What do we do now? All witnesses for the prosecution are paid by the county, any witnesses for the defence, whose names are given or who are called before the magistrate, are paid by the county. We go further, and if the prisoner indicates that there are witnesses, the public authority do their best to get them, and even pay the expenses at times. I cannot understand why, if the law is to be uniform for the rich and poor, and it be true that in the administering of the law of divorce, the poor have not the privileges of divorce which the rich have, that is not sufficiently met in proper pauper cases by letting the petitioner's expenses be paid just as the expenses of a prosecutor would be paid. It seems to me that that meets the whole difficulty, without in any way infringing upon what I may call the difficulties or the protection which now surrounds this difficult question of having a tribunal.

15,510. May I suggest a difficulty I should like you to meet, because you have assisted us very much. Many witnesses have said that there is a class that could not be categorised as paupers—clerks, poor clergy, poor people of all kinds—to whom it could hardly be said any pauper system would apply, but to whom the expense of a divorce case brought to London, amounting in contested cases to serious sums, and even in uncontested cases, would amount to larger proportions than they could afford. That class of case could not be met by the suggestion you have made?—It is only a question of degree. With regard to contested cases, if you ought to have the very best tribunal, that is one of the burdens the people would have to bear. In uncontested cases, issues of adultery, if it were thought that the mere issue of adultery might be tried in some way satisfactorily to the court, there would be means of dealing with it, but I certainly desire to say, from my point of view, it is not because it will be a burden upon a person. You must go as far as amounting to

a denial of justice. There are many ills which involve people in the position of serious expense, men such as clerks.

15,511. They could not get pauper relief?—It depends upon what standard you establish. They could not get the present pauper relief. But now we are providing by rules, or proposing rules, that pauper litigants shall get free solicitors and counsel, and therefore it is not the present standard of pauper relief. If the evil of people not being able to get divorce is such that you want to amend the law and assist them, assist them by enabling them to get the remedy under proper control. Do not injure the safeguards which now surround the Divorce Court in order to benefit and give relief to people who cannot get it now. In my judgment—I speak with humility—I have the strongest view you are attempting to remedy it in the wrong way.

15,512. Would your suggestion be, although a pauper standard, rather a high one, did not meet certain cases, that those cases, if it were proved to the judge they could not come to London at their own expense, should also be included?—Yes. I start by saying that all the preliminary steps of filing the petition and the necessary things of that kind, should be done, if you like, at any local registry, and without any fees in a proper case, the registrar being satisfied by affidavit. Then, whatever the standard you choose to fix is, if the court is satisfied that a person is not in a position to obtain divorce properly safeguarded, subject to that, a greater or less extent of relief should be given as the case requires. After all, it is not a large sum.

15,513. You admit the procedure up to trial might take place in the local registry, in the High Court Registry?—I see no reason why it should not.

15,514. Then there would be nothing more than the cost of trial in London?—The cost of witnesses is what it means, really.

15,515. Would that include not merely the cost of relief, but the expenses of the person against whom relief was claimed?—You have never paid the guilty prisoner's expenses.

15,516. Many people would contest their cases. A fair case of defence would have to be disclosed before assistance would be justified to bring it before the court?—I do not go as far as that. If you like to have a code of perfection, and say if a charge is improperly brought by a pauper person the State shall pay the expenses of the person improperly charged—I do not go as far as that. I want to give facility to a poor person who cannot get the privileges of the law, whatever they are, and put them in the same position as the person who can.

15,517. I have had numerous letters from defendants saying, "We cannot afford to come to London to defend: we must let it go by default." It may be they were not justified in saying so, but still one would have to meet the difficulty?—I should regard with suspicion a person against whom there was a strong *prima facie* case saying he could defend it but could not afford it. But even then, if necessary, I am prepared to say the court might pay his witnesses. I have no objection to that. I think it is so important that the divorce law should be administered with proper surroundings, that the State ought to bring the pauper and assist him to get to the court, and not damage your court in order to cure this evil. Numbers of people want to get divorce and would be glad if it could be heard locally and not in London.

15,518. May I ask whether that sufficiently exhausts the point about the way to meet the difficulty?—As far as I am concerned, I think it does.

15,519. I will leave it to be developed by other questions, if necessary. I pass on to the next point, as regards the amendments in the law of divorce?—I am getting beyond what I want to say. What I have been saying is the result of an opinion rightly or wrongly formed on years of experience. The grounds of divorce do not depend on experience; it depends upon the view one takes. I am strongly opposed to making divorce easy. *Prima facie* I agree, I think a wife should have the same remedy

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as the husband. I cannot see any reason why the marriage obligation, whether you call it a contract or a religious obligation, whatever you call it, should be less binding on the husband than on the wife. I agree in this. I think that forgiveness, the power and the duty to forgive, may sometimes be more easily open to a wife than to a husband. Take the casual case of a husband's adultery, which is undoubtedly the same as though it had been cruel and persistent. I can imagine, of course, it is a very vague idea, that one ought to say a wife ought to be more ready to forgive than a husband, and I suppose the case of husbands forgiving wives is much rarer than of wives forgiving husbands; but subject to that, I cannot see why the rights of the people should not be equal. There are many cases in which the adultery is of such a character that I think it is monstrous the wife should be denied divorce and only given separation, as, for instance, where it has been persistent, and even apart from cruelty, where it has been under circumstances which must have caused infinite misery and unhappiness to the wife. Therefore, the alteration I should be disposed to make—I am aware it is scarcely a lawyer's alteration—is that the wife should be given equal rights with the husband, but with the power of the court, or the invitation of the court, if it is desirable, in some instances to act rather in the nature of a mediator than a judge. I know it is not tangible, but that is what is in my mind.

15,520. Lord Guthrie put a question yesterday which indicated that in Scotland it had not been found a wife had acted on a single instance of adultery on the part of her husband?—That I do not know. There is no distinction in law at present.

15,521. Then what other grounds do you suggest as grounds for divorce?—The only other ground I am prepared to concede, and I do not know that I shall meet with universal approval, is that of permanent lunacy. I think permanent lunacy should be a ground of divorce. It is an answer to an action for breach of promise of marriage at the present time. There was a long discussion in the Court of Exchequer in the old days, and it is so very serious from the point of view of social questions, heredity, children, and all that, that I think it is a sufficient ground. The cases of permanent lunacy are not numerous, and I think it is a special intervention of Providence.

15,522. You would have to be satisfied that it was a proper case?—Yes.

15,523. After a reasonable length of time?—That is the only alteration I propose.

15,524. Before you pass from that, may I ask whether you have considered the question of permanent desertion?—Apart from adultery?

15,525. We have had cases mentioned over and over again of people leaving and never being heard of, possibly and probably, it is suggested, living elsewhere in adultery, but unable to be found out, and the Scottish law has been drawn to our attention, namely, malicious desertion lasting for four years?—I have not considered it sufficiently, and I do not think my opinion would be worth anything. I wish to say, both from the point of view of husband and wife, I want to do everything as far as I can influence public opinion, to prevent divorce, to promote the coming together again, and forgiveness on the one side or the other; but as to whether or not a long term of desertion would be sufficient, I do not think my opinion is worth anything. There is another important question which has been mooted, on which I have the strongest possible opinion, that penal servitude should be a ground. I am opposed to it from every point of view. I have sat as a criminal judge for 10 years, and have had a great many appeals from prisoners sent to me personally, and I have had to consider punishment more carefully than anything in the whole of my work, and I am satisfied that it would be felt as the cruellest thing possible that, in addition to the punishment that comes upon him for breaking the criminal law, his home should be broken up. I am sure from what I have heard and seen genuinely from prisoners in prison who have communicated with me, partly because I have been a visitor and partly because I have been a judge, with

reference to their wife and children, that it would be a most terrible increase to punishment in scores of cases if a man who is hoping to come out and reform himself—many of them do come out and reform themselves—should find out that the effect of his crime has been that his home had been broken up, his children possibly put in the care of somebody else, and his wife married to another man. It would be a most terrible punishment. I quite understand the cruelty inflicted and the hardship inflicted on the wife, and we take that into our consideration in connection with sentences. We cannot do very much in that direction, but for a man who is going to have a term of five or six years penal servitude to know that a probable consequence in some cases will be that his wife will get a divorce and marry somebody else, would be removing from a criminal almost the only inducement to reclamation that exists. I endorse every word Sir Alfred Wills said in the letter he wrote at the beginning of this year. My opinion is not formed on that, but from what I know of the way in which these poor people who are sentenced feel their sentences. I think it would be almost too brutal to make it a punishment for crime that either husband or wife could obtain a divorce. One knows the misery of the poor woman; I feel for it deeply; I suffer from it, if I may use the expression. It is one of the most painful questions, the wife and children. They plead often for a light sentence, and there are those years of misery, but they do look forward to the hope of the husband coming out, and that ought to be encouraged from a religious point of view and from a social point of view. You ought to encourage the woman to bear that burden, and help them to bear it.

15,526. Does that deal with the case where the sentence is a life sentence?—A life sentence is not a life sentence, you know. I am very unwilling indeed to allow the question of the relations of husband and wife to be introduced into our criminal law. Life sentences are very uncommon: they mean, as a matter of fact, 20 years, which really means 16½.

15,527. Have you any idea what the total number of life sentences in the year is?—No, I have no idea; Lord Desart could tell you, but I am satisfied that it is such a small proportion that to amend the law from that point of view would not be worth considering. I attach more importance to the influence both upon the husband and the wife. I do not think the wife ought to be allowed that ground. If the misfortune has come upon her of her husband being a criminal, she has to bear her burden in this life, and to say that that should be sufficient ground for her to marry somebody else is perfectly dreadful. I think self-restraint in that respect ought to be put upon the wife. But I look at it from the point of view of the administration of the criminal law. I should regard it as disastrous if I knew, when I gave a man five years' penal servitude which I feel obliged to do now, or even longer now under the Preventive Detention Act, that I was giving the wife the right to get a divorce.

15,528. It has been suggested that this right should be given in the case of the habitual criminal, partly because he is secluded more or less after a time and partly because of his hereditary tendency?—He is not now, and will be still less under the new Act. The idea is that on a sentence of penal servitude a man may have preventive detention. If he behaves well his term may be shortened, and he will be let out under certain circumstances, and it is an argument against it. The amendment of the law with regard to preventive detention is an argument against it because the relations will be able to be resumed at an earlier period than at present. It is like letting them out on licence under the old ticket-of-leave.

15,529. The other point I do not think you have dealt with is that in those cases there is the hereditary tendency which it might be desirable to avert?—If you are going to attempt to touch the hereditary tendency, do look at the difficulties you are being involved in. What is worse, as far as hereditary tendency is concerned, than venereal diseases? It is the worst possible of all. You cannot interfere in those cases.

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You ought to stop marriage if you do that, and everybody knows, who lives in the world, that in many cases it is of the greatest importance, and even with the risk of hereditary diseases, there should be families. Take drunkenness; as far as I have been able to follow it, it is only second to venereal disease from the point of view of heredity. If you are going to say because a criminal tendency in a man, who may be reclaimed, is sufficient to justify the wife claiming divorce, you are opening the door to difficult questions which may be answered in the wrong way.

15,530. There is one cause I have not asked you about; that is where the conduct of the husband is so cruel as to make life unsafe?—You mean apart from adultery?

15,531. Yes?—I should be rather disposed to think that might be a desirable alteration of the law. Under the existing law the two causes, as you are aware, included in desertion are cruelty and adultery, but I should have thought the cases where there was no adultery are rare. However, I do not want to express an opinion against it. If it is that persistent cruelty making life a misery was a sufficient ground for divorce, it does not conflict with any principle except my objection to making divorce easy.

15,532. I think that finishes that point, except this, if I may revert to what was passing through your mind, that these changes might make some difference in the administration?—If you provide local tribunals for divorce on the ground of adultery alone, I should not so much object to undefended cases being tried, subject to what I think is of paramount importance, that of keeping strict control over these cases, that divorces should not be obtained by people who have no right to them, that they are not collusive, that they are not connived at; and although you call them undefended, my experience shows undefended cases are the cases that want watching. Where a wife is willing to be divorced and to go into court, there is very little evidence put before the court except proof of adultery. You have had cases where you were satisfied the story about the adultery was not true, therefore the undefended cases want watching. From the point of view of where they should be tried, if there is no other issue it is not a matter of importance, but where other issues are involved it is important, and that the King's Proctor should prevent improper divorces. I differ from the practitioners who come before this Commission and have said there is no necessity for the King's Proctor. I think there is the strongest necessity for the office.

15,533. Your memorandum does not deal with the matter which has been put before us, possibly because that is not within your general cognizance, namely, the magistrates' work, separation orders?—I am aware of that, but I do not know enough about separation orders.

15,534. I would like to ask you generally, do you think permanent separation without a divorce is a satisfactory position?—It is rather largely mixed up with what I have spoken of as the hope of putting an end to collusion. If you ask whether permanent separation without a divorce is a satisfactory position, I should say certainly not, but whether that is sufficient ground for altering the law is a different consideration.

15,535. May I pass on to a very important matter, on which your experience will be of the utmost value; that is the question of the publication of divorce cases?—I have the strongest opinion about this. I have worked in a small way upon it for many years in connection with other people who have done more. We deal with this question from the wrong standpoint, I think. I consider there ought to be the fullest publication of the names of the people who have got into the Divorce Court, to use a popular expression, against whom a decree has been made; whether or not the names of people who have been found not guilty should be published is a difficult question. It depends largely on the wish of the person. In many cases it would be a hardship to say a case had been brought against a man and he had been acquitted, because many people will not notice the acquittal, but will think where there was some smoke there was some fire. I am dealing

with the guilty people. The right course is to publish as publicly as you like the names where they have been found guilty either as co-respondents, or as respondents. The other things that ought to be published are the opinions, the judgments of the Court, in important questions of practice, and those will be absolutely free from any objection. They are for the guidance of the profession.

15,536. Those are allowed now?—They, of course, should be published. I only mention that because the question has come before us in connection with criminal law, as to how far there should be reports of such proceedings in the criminal courts, and the judges have resolved that the result of cases should be published, and that the opinion of the judge for the guidance of other people should be published. Once you have done that you do not want anything more from the point of view of publication. Now I come to the evil of it. I have had for years brought to my attention the mischief done by the reports in certain low-class papers of the details of divorce cases. You cannot touch them for indecency in the ordinary sense of the word, or for obscenity. There may be gross cases in which you might be able to, but I am speaking of those which do as much evil, I mean the accounts which are put in head-lines, "The lady's maid's evidence," and "The housemaid's evidence," which is followed up in these papers by a detailed account of question and answer; of the servant going to the room and saying what she sees, and incidents which the prurient mind fastens on, which could do infinite harm to young people. It has been said in evidence before this Commission that cases have been known where absolute evil has been done by these stories being read by young people, and I cannot see the slightest ground for the publication.

15,537. The only ground suggested is that it is a deterrent to people?—I do not believe it for one moment. I am afraid there are people who do not mind their name appearing in the court. If it be a deterrent, it is not as much so as the fact of a person appearing in the black-list as being guilty under circumstances which attract nobody. I cannot understand how that publication can be a deterrent.

15,538. Your view is that the greater evil by far is the detailed accounts?—Yes. I do not agree about it being a deterrent to the person who has come to the court as a guilty person. It is not a deterrent. The mischief done to the young is incalculable, particularly to boys and girls between the ages of 14 and 18. This Commission has had accounts, I believe true accounts, of the terrible extent to which immorality does exist between people of that age. It is largely promoted by this sort of publication. Ideas are put into their minds, and there is nothing to be gained by it. I want to remind you of what happens. They do not report every case with all these details, but in some of the papers, I am sorry to say frequently the Sunday papers, those that come out on Sunday, you will find extraordinary disclosures, and then there will be one case which will be taken, and all these suggestive details—I do not use the word "indecent" because the mischief is not done by the indecency of them, but by the suggestion. They are not obscene or indecent; very few of them are within the case of *Regina v. Hicklin* and those sorts of cases, but the mischief is done by the suggestions that are made. I have not been able to understand what public use could be obtained by boys and girls or anybody, servants particularly, being allowed to read the details of some adulterous intercourse which has taken place at an hotel, or at some place which has to be proved for the purpose of the court. I have watched this, and I have never seen any advantage, and the best of the Press entirely agree with this view. They do not publish those things; it is only the papers that are cheap and do harm that publish the detail. Therefore it is not necessary in the administration of justice it should be done. We have never grappled with this evil with half the courage we ought to have.

15,539. Do you remember the letter which was written in 1859, and published in "The Letters of Her-

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Majesty Queen Victoria"?—No, I do not remember it. Would you read it to me?

15,540. It is in the published letters, so I think I can legitimately refer to it—at least I hope so?—Is this in Lord Esher's book?

15,541. It is in the publication by Viscount Esher?—I know the book: I think I have read it, but it has gone out of my mind for the moment.

15,542. "The Queen wishes to ask the Lord Chancellor whether no steps can be taken to prevent the present publicity of the proceedings before the new "Divorce Court." It had been in operation about a year before. "These cases, which must necessarily increase when the new law becomes more and more known, fill now almost daily a large portion of the newspapers, and are of so scandalous a character that it makes it almost impossible for a paper to be trusted in the hands of a young lady or boy. None of the worst French novels from which careful parents would try to protect their children, can be as bad as what is daily brought and laid upon the breakfast table of every educated family in England, and its effect must be most pernicious to the public morals of the country." That is, very much what you are saying?—All I can say is I have no doubt now I read it. I do not remember it at the time; I was a boy at school.

15,543. There is this note, if you will let me finish first: "Lord Campbell replied that having attempted in the last Session to introduce a measure to give effect to the Queen's wish, and having been defeated, he was helpless to prevent the evil." May I suggest a good deal of cold water was thrown on things in those days?—I have no doubt I read that letter, but it escaped my attention. I need scarcely say I endorse every word that the late Queen says; it only shows her great wisdom. I should like to repeat what you have said, that if that was the idea the Queen formed in 1859, all I can say is that our own experience of the last 40 years has shown how wise she was, because what we have been trying to do through associations and otherwise has been in consequence of the result which she pointed out. Over and over again you will find in cases where immorality has become an incident in a case, if you trace it out you will find that, as with betting and other things, it has been generally started by this kind of literature. These ideas do not come without something. Their surroundings are bad enough, I know.

15,544. At that time, 1859, there was not such a development of the Press as there is now?—No, I suppose there was not, but I am dealing with the bad part of the Press, not with the good.

15,545. Lord Campbell was unsuccessful. You think it ought to be successful now?—Certainly.

15,546. I ask this in order to remove any misapprehension there might be, if there is any, on the part of those responsible for publication in the Press. Of course, you know the law of libel. There was an Act in 1888?—Yes.

15,547. I find this in clause 3 of cap. 64 in the Statutes of the year 1888: "A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged." Then comes this important proviso: "Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter." I take that to mean, even though something of that character might be mentioned in court, that would not justify the paper reporting it?—Certainly not.

15,548. Although it was in fact mentioned in court?—Then comes the difficulty. That was very carefully discussed, and the law which led to that was very carefully discussed, in Hicklin's case, which you will find in Law Reports 3, Queen's Bench. That was the case of "The confessional unmasked," which attempted to justify publication on the ground that it had been produced in evidence, and was a report of what had been produced in evidence, and, further, that it was published with a good motive, that of attempting to expose the wickedness of certain establishments under

the Roman Catholic religion. Lord Chief Justice Cockburn, in setting aside the judgment of the magistrate, said: However laudable the purpose, although it had been produced as a matter of fact, it had not been read, it was so grossly indecent and obscene that the magistrates ought to have convicted, and they did convict. These reports keep clear of obscenity and indecency in the ordinary sense of the words. I think you understand what I mean, that the story of something going on in a bedroom or bath-room can be told in a way which is suggestive, and will suggest everything to these young boys and girls, or grown-up people, without any obscenity or indecency in the expression. I have thought over the question carefully, and there are later cases since, subsequent to Hicklin's case. I do not think you could proceed against one of these newspapers on the ground that it is obscene and indecent.

15,549. I wanted to get the fact that, even though there is privilege for a fair and accurate report, that will not justify the publication of indecent matter because it has been mentioned in court?—Certainly not; it will not justify it in the least, and that is the provision of the Statute. I must point out that does not touch the evil. The power of proceeding against these people under that Statute, or notwithstanding that Statute, does not touch the evil of this class of publications.

15,550. I gather that Statute was rather declaratory?—Absolutely so.

15,551. I think that exhausts all you have given me in your memorandum?—Yes.

15,551a. (*The Solicitor-General.*) I should like to ask a question or two about the latter part of your evidence, the publication of proceedings. As I follow what you have said, the main object you would have is to prevent the publication of the details of evidence of adultery?—Yes.

15,552. The point of the question I wanted to put to you is to ascertain whether there is not some limitation to be placed upon the power of the Press to report proceedings now as distinguished from prohibiting the report of the evidence altogether. That is the point upon which I wish to ask some questions, because there are various suggestions which are before us. If I may start upon the assumption that everybody would be against the publication of details of evidence of adultery, do you not think that the point you have in mind of the evil which you want to correct would be met by prohibiting all publication of details of evidence of adultery, leaving merely the conclusion?—I think it would be largely met. It is really only a means of carrying out what I have in mind.

15,553. I will tell you why I am putting the question. Supposing you had recourse to the one remedy suggested, of publishing the names of the persons, merely for compendious reference, as a black-list, that after all might operate very unfairly on a number of persons. I suggest to you that, however strongly adultery may be condemned, there are degrees of culpability, and the mere publication of the name would not meet that difficulty. To make my meaning clear, may I suggest, for example, the case of the man who is a friend of the husband, and comes into the house as the friend of the husband, and takes advantage of the husband's absence to seduce the wife. That kind of case is quite a different case in degree of culpability, it may be said, from the public point of view, from the case of the man who knows nothing of the husband and meets in different circumstances?—It is much worse, and the law recognises it as worse. In one case he can get damages, and in the other he cannot. I am agreeing with you it is very much worse; there is a marked distinction between those two cases.

15,554. That makes plain the point I have in mind. Would not the publication of the evidence in that case be fair in one case as calling down upon the man, the very guilty person, the extra condemnation because he was a traitor to the husband; and equally would it not be fair in the interest of the man who was not on friendly terms with the husband, so that you may distinguish between the two?—I am afraid, from my

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standard and my regarding of the contract of marriage, I should not be so careful to protect the less guilty man in that particular way. I have not the least objection to the list—I will not call it the black-list—but to the publication of names being accompanied by any statement as to extenuating circumstances that is thought right, but I cannot see that the publication of the details of the adultery can be necessary for that purpose. It might be necessary to make a statement that the co-respondent, the person you mean for this purpose, did not know she was a married woman. There is no harm in that being stated. I am not differing from you. I am suggesting that the list could be qualified in that way, but I do not accept what you began with, by saying it is necessary to publish the details of the adultery for that purpose.

15,555. On the contrary, I guarded myself from saying that. I said I would start with the assumption that everybody would agree the details of adultery are never necessary to be published. I will assume for the moment that is so?—I should like to say I should agree with you. I may possibly have spoken too summarily and quickly when I said nothing more than the names and the result. I think it may be that better consideration will show that something more might be published without any harm being done, but I am not prepared to say that because a man did not know that the woman was a married woman, that ought to be published in his protection. I do not think it is the right stage to do it.

15,556. I quite understand there may be different views, but still bearing in mind what you want to prevent by the publication, is the suggestion of indecency in the minds of persons who may read it, my point is would not all that objection be met by prohibiting by Statute the details of evidence of adultery, and merely recording the fact of whether the jury or the judge found adultery, without going into the details of the fact upon which or from which the adultery has been found? It is that which is the objectionable part, I suggest to you, and if you cut that out altogether you leave in all kinds of other considerations, which, although they may not affect your mind, still would have some bearing upon the degree of culpability which the world would visit upon these persons?—They affect my mind very sensibly, I assure you. I agree with you entirely, in all probability what I am aiming at would be cured. The evil I am aiming at would be cured by prohibiting all publication of evidence of adultery. I probably think it would, but it requires wiser heads than mine to say what ought to be in the list that is published. I accept fully what you suggest, but what I am objecting to would be largely met by prohibiting evidence of adultery being published.

15,557. You have given us a difficult task to find wiser heads. I think in substance one could meet the evil in that way?—I agree.

15,558. There is one fact I want to ask about with reference to the county court. I am sorry I was not here in time to hear the beginning of your evidence. There is only one matter I want to understand from you. As I follow it, your view is against the extension of jurisdiction to the county court under any circumstances?—Or to any local court, mainly—I think you were not here when I said it—on the ground that in my judgment the successful working so far as it has been successful, of the divorce procedure, has depended entirely on it being administered by one or two judges of great experience, and uniformly administered by them, recognising what the rules are, which I do not think could possibly exist in any system of local courts. I do not know how much of my evidence you heard, but I said if you take a county court judge and train him as a Divorce Court judge—there are admirable men among the county court judges—he will do as well as anybody in time: but then you get a divorce judge who gets experience. I am combating the suggestion you should meet the evil by establishing divorce jurisdiction in 10, 15, or anything like that number of places under different judges.

15,559. Your remedy would be to allow facilities for the poorer persons to bring their action?—Before the Divorce Court judge somewhere.

15,560. When you say “somewhere,” do you contemplate he should go to assizes?—I do not think the expense of coming to London if the State pay, on the average, would be very different. I should prefer it in London, I must say. I think the King’s Bench judges as a class would be better in some ways, because they are in closer touch with the Divorce Court, but I do not think it would be a right thing to give divorce jurisdiction to myself and 16 other judges.

15,561. You would agree that it is not satisfactory to deal with the cases, poorer person cases, as they are dealt with in the High Court?—If it be true that a large number of people who are poor do not get whatever privileges are given by the divorce proceedings, it ought to be remedied most undoubtedly, and I think the right remedy is that which is analogous to the criminal law, of paying their expenses.

15,562. The main difficulty would be procuring witnesses from some distance?—There are not many witnesses, particularly in undefended cases.

15,563. With reference to undefended cases—you may have answered this already—do you see any objection in undefended cases to the use of affidavit evidence, where the cases are undefended?—Of course you then get into difficulty in dealing with one of my main and strongest personal objections, that is my objection to a person who is not entitled to divorce getting it, as, for instance, the adulterous husband who brings the charge against the wife, and the wife does not defend because she is willing to be divorced. If you allow affidavits in that case, the door of improper divorce—it is collusion in one sense—would be largely opened. I should not like to receive cases upon affidavit evidence. One cannot shut one’s eyes to what happened when a junior: you had only to call two or three witnesses, very often only two.

15,564. As we know, cases take 10, 12 or 15 minutes?—Certainly.

15,565. But there is not very much difference between that and affidavit evidence?—There is a great deal of difference, to my mind, in the safeguard that the man does not know to the last moment he may not be cross-examined. Cross-examination on affidavits is different to where the man has given evidence orally in court, or the witness has given evidence orally in court.

15,566. In the undefended case he would not be cross-examined?—But then what I mean is this—I may be wrong about it; I am only putting my opinion, because I have formed it strongly—I feel that there is the necessity for much greater criticism or safeguarding in these divorces. I came to the conclusion, rightly or wrongly, early in my career as Attorney-General, that, practically speaking, the great majority of cases brought before me were collusive cases, that is to say, that the husband could not obtain a divorce according to our existing law if the facts had been known. There were over 300 cases; in a great many of those cases I sanctioned intervention, and the petitioner never appeared. In the few cases he did appear, I do not think the King’s Proctor lost a single case while I was Attorney-General. I am sure, from communication with Sir Augustus Stevenson and Lord Desart from time to time, the King’s Proctor does not find out anything like all the cases. If you say you do not mind—I do not mean you—but if anybody says they do not mind, let the people get away although they have been adulterous, I am answered completely; but taking the view I do, that the law says the adulterous husband shall not obtain divorce when his wife has committed adultery, he does not come into court with clean hands, and I do not think it is desirable to make it easy to bring undefended cases unless you properly watch them and they are safeguarded. I know my opinion is against a large number of very influential gentlemen who have said that there is no collusion at all, or very little. My experience is directly the contrary, and regarding collusion and improper divorce as a great evil, I do not think you ought to facilitate the trial of undefended cases unless you get some proper safeguard

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against the law being abused. I want to stop the law being abused in whatever procedure you adopt.

15,567. You would attribute great importance to the fact of the witness being in the court and always open to being questioned by the judge, although there is no counsel on the other side. He would not know but that some question may be put by the judge which would expose things?—It is in my recollection twice. I do not think it was before Lord Gorell, because after I was Attorney-General I would not go into the Divorce Court, but I think it was before Sir James Hannen; it certainly happened before Mr. Justice Butt, and I know two cases in which the judge himself said, "I am not satisfied with this story of the adultery, and I will have further investigation made," and I daresay Lord Gorell has done it. In one case it went no further. Therefore the judge is a protection. Being there, as you say, and the petitioner knowing or the witness knowing he may have questions put by the judge is some protection.

15,568. (*Chairman.*) Might I say there are cases besides the ones you have mentioned, where the judge is in doubt and where he has had the shorthand note and other papers transmitted to the King's Proctor for special instructions?—I had forgotten that, but I remember it now. More than once in the instructions before me I have been told, I should think several times, that the papers were sent to the King's Proctor by the direction of the judge.

15,569. I have often done that?—That shows I am not wrong in thinking the presence of the judge is some protection.

15,570. (*The Solicitor-General.*) If I may say so, I quite agree. There is always the difficulty, as we know from practice, that the affidavit does not correctly represent what the witness means?—Yes.

15,571. What you say depends very much upon this, as I think you have made clear. You assume, first of all, that divorce is not to be granted merely because two parties wish to be free from each other?—Exactly.

15,572. The only way you can protect that from happening, if you say divorce is not to be given by consent of the parties, is by such an official as the King's Proctor?—Yes.

15,573. I would like to ask you a question which has been put to several witnesses before. Do you see any way in which the registrar of the county court, for example, could satisfactorily discharge the duties of the King's Proctor?—Certainly not.

15,574. The suggestion is that the proceedings should be brought in the county court, and one has asked what is to happen with reference to the King's Proctor?—I have spoken of my own motion with reference to my view as to the absolute desirability of uniformity in the practice of the court. I have instanced that more than once by reference to our experience the last 30 years. I ought to say I feel equally strongly the King's Proctor's work of great delicacy and responsibility should be administered by a person of ripe experience in that also, and it would not be suitable to entrust the King's Proctor's duties, partly inquisitorial and partly legal, to an official who happened to be the registrar of the court. I am obliged to you for putting the question to me. I think it would be unsuitable.

15,575. It would be difficult for him to find out the facts?—Yes.

15,576. That is one of the great obstacles to the King's Proctor bringing the cases before the court—that he cannot get the information?—Certainly. I am anxious to avoid saying anything more than I ought to say; but I well remember a very important case where the paper evidence before me was quite clear, where I sanctioned the intervention, and where it failed solely because certain witnesses who had given the clearest statements and signed the statements were not forthcoming; and I well remember cases in which I had not the slightest doubt about it, nor had the King's Proctor, but the instructions were insufficient, and he came back to me and said, "May not we go on? We know it is the fact, and we cannot get it." I had to say, "I will not let you go into court unless you can prove

"it." Lord Desart will speak with greater authority than I can, but I am satisfied that the duties of the King's Proctor are most responsible and ought to be exercised by persons of experience, and clerks under him who confine their attention largely to that class of work, and are far beyond anything that ought to be entrusted to a registrar, because he is a registrar, however capable he may be in other capacities.

15,577. And with a great many other duties to perform?—Yes, an enormous number. In some courts there are two or three registrars. Not only that, the county court judge has to be a registrar at different places—I think I am right?

15,578. (*Judge Tindal Atkinson.*) Yes?—It does not follow it is always the same registrar.

15,579. Except sometimes the districts are combined?—You must not assume that the registrar of a county court judge is always the same person.

15,580. (*The Solicitor-General.*) No. There is one other matter, with reference to sentences of penal servitude. Have you given quite sufficient weight to the position of the wife under the circumstances of the husband being sentenced to penal servitude? I ask the question with all deference. By virtue of what you said, it seemed to me you laid very great stress upon the position and feelings of the man who is sentenced to penal servitude, but the position of the wife during that period is one of very grave difficulty, for very often she is left with children, and no means of support, through no fault of hers. I want to understand your view. Is your view that, under the circumstances, she must bear that, and, notwithstanding it may be very hard upon her, you think she ought to suffer it, and that consequently you do not give further weight to what she may suffer during that period?—I hope I have, because I should deeply regret it if it were thought, in expressing my opinion, I had not considered most carefully and sympathetically the position of the wife. I can assure you I feel it most strongly; but, in the first place, she is married to a man, and has entered into a contract with him which is to last her and his life, and I am assuming, for this purpose, there is no question of the breach of marital relations having occurred in this case. He, either by temptation or otherwise, it may be habitual, has fallen within the criminal law and is punished. The wife has to bear that burden. I think, looking at it, deeply as one pities her and feels she may have to get assistance from friends, or it may be from the parish, she ought not to consider that that calamity which Providence has brought upon her by her husband's conduct ought to be a justification for her breaking the marriage contract. I consider that her misfortunes and unhappiness and troubles should be met in other ways. From her standpoint, I should be sorry to encourage the view that, having to bear the consequences of her husband's criminal conduct, she should be allowed to avail herself of that to get rid of him. I hope in a great number of cases she will retain an affection for him, and look forward to the day when he comes out. I know many cases in which it is so. They will count the days and go to the prison to meet them. Therefore, from her standpoint, I can see no reason for it.

15,581. Suppose you change the law and allow a divorce for an extended period of penal servitude, there would be nothing to prevent the wife remaining faithful till the man came out?—There would be the temptations she would be exposed to by other men who would say "I am earning good wages, if you will marry me I will look after you." We do not want to belittle the marriage tie.

15,582. But the temptation would exist now?—That is another branch of immorality, if I may use the expression. I have considered it (you must not think, I am sure you do not think, I have not considered it most carefully and weighed it carefully in my mind), but I feel that you are introducing into the consequences of criminal acts something which the law never contemplated and ought not to contemplate.

15,583. The reason I put the question was because it occurred to me, I may have been wrong, that the view you were putting forward was entirely the man's, and that considering it from the woman's point of view

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you thought it was something she ought to bear?—I am grateful to you for putting the question, because I had considered it from both points of view, and I only said I think the woman ought to bear it because that is the consequence of my opinion, and I think that there are good and religious and moral reasons why she should bear that burden; but to give her, I will not call it the privilege, but the opportunity of breaking the marriage contract on that ground, would be going beyond anything that the law requires. We are all working for the reclamation of prisoners, and I repeat, I stated it in the memorandum I sent in, I know that the hope of getting back to the wife and children and hearing from them is such that you would often be surprised, if you do not happen to have visited prisons, at the number of requests one gets to have an additional letter from the wife. It is a very common incident.

15,584. You would make no distinction, from your point of view, between a man who is an habitual criminal, and a man who perhaps has only been sentenced once?—I was rather looking at it from the question of principle. I know that in between those periods of crime they do return to their wives, and the wives come and give evidence not infrequently that they have been good husbands during that time; but the criminal instinct arises and they fall away. You must not assume because a man is an habitual criminal that he has not strong feelings for his wife and children.

15,585. Then arises the other aspect of it, the criminal who comes out of prison and lives on his wife, who has been keeping the home together whilst he has been away, till he commits another crime. That case has come before you, I presume?—Undoubtedly it has, but I am afraid I cannot do no more than say that having thought it over carefully I think it would be disastrous to the marriage relation and to the chance of reclamation of a criminal if he knew, when he got a sentence of penal servitude, that his wife could divorce him.

15,586. You make no distinction, I understand, between criminals for the purpose of the point we are considering?—I do not make any distinction in principle. If you say would you mind this being applied to a man who has a life sentence, the case Lord Gorell put, that is far less objectionable; but I am dealing with the general principle, and as far as I can apply my mind to which side one's judgment should fall, I am not prepared to draw the distinction; but I answer you at once frankly, that there would be less objection to dealing with extreme cases than to the average ordinary case of penal servitude. For anything like three, five, or seven years I do not think that the wife ought to be able to get divorced. The man has been often most faithful, her children are his children, and I do not think the affection is always put on. In some cases one knows that it is put on. In a very large number of cases I have tried the appeals on the ground of the wife and children are, I believe, really genuine.

15,587. I was asking for the benefit of your assistance because I think there is such a great difficulty in saying at what period you would draw the line?—I am not prepared to make it a part of the punishment or a consequence of the offence in any case.

15,588. With reference to the first part of the suggested changes which are being considered I want to point out this?—You mean about the grounds of divorce?

15,589. Yes. It is only on one aspect that I want to ask you one question. It was suggested that it was thought to be more the wife's duty to forgive than the husband. In practice there is no doubt, but supposing you did allow a woman to have equal rights of divorce against her husband for the husband's adultery, in the vast majority of cases, for example, for a single act of misconduct, or I daresay acts, the wife would forgive?—I thought that was practically what I had said. I thought I said I recognised if you did give equal remedies, in all probability the wife would still be more likely to forgive than the husband. I do not think it will make much difference; I agree in that. What I did say, and I am only repeating myself in

saying it again, was that I wanted the courts to be of some sort of assistance in bringing about that result. I did not know till Lord Gorell mentioned it that the Scottish system did not allow divorce for one isolated act.

It is not quite that?

15,590. (*Lord Guthrie*.) No, it was rather this, we do allow it, but we have never known any case where a wife did bring it for that?—It really supports what the Solicitor-General said.

15,591. (*The Solicitor-General*.) What I meant in as plain terms as I can put it is that, although you give the right to a woman to divorce her husband for one act of adultery, just the same as you give it to the husband for one act of adultery by the wife, in the vast majority of cases the woman would not take advantage of the right which is given, but would exercise her election and forgive the husband?—I think you have brought out in relief what I meant to say. I agree with you.

15,592. Nevertheless the law could not distinguish. It would be impossible for the law to say for one act, or two acts, or three acts there should not be divorce, but for more there should?—It would be quite impossible. You must remember I think that the principle of leniency or forgiveness on the part of the wife has up to now been recognised by the fact, which I do not think can logically be justified, that the wife must prove more than mere adultery to get a divorce. I do not say that it is right, but it is probably from that point of view that the distinction was drawn.

15,593. That has never been put upon the ground that it is because she was expected to forgive?—I do not know why it was put, but I find it has been so for 50 years.

15,594. I suggest that it might be to a woman much more revolting than the wife's adultery would be to the husband. It is only a difference of bringing up?—That is quite true. If one looks back one would find something of the kind in the Debates. I have not looked at them for many years; I am speaking of the Debates when the Divorce Bill was on.

(*Chairman*.) I have read every line of those Debates. The Act was intended to carry out the practice of the House of Lords, but the Attorney-General in the House of Commons, and the Lord Chancellor in the House of Lords wanted to go further than the practice of the House of Lords.

15,595. (*Sir William Anson*.) You would put the husband and wife in precisely the same position. The wife would have the same right as the husband?—Should I do so?

15,596. Yes?—I do not see any logical reason for the distinction so far as the binding nature of the contract is concerned. If you think that the working of the Act is facilitated or improved by giving the wife a less privilege I can understand advocating the maintenance of the present state of the law. Except from that standpoint I cannot see why the wife's rights should be less than the husband's.

15,597. If you give the wife the same right as the husband you practically limit the issue in every case to simply adultery. You do away with all questions of cruelty or desertion, and get the sole issue to be that of adultery, whether on the part of the wife or the husband?—In a large number of what I may call the improper divorces that is the result now, that as a rule the wife is the adulterous person, where she wants to get free and the husband himself has committed adultery. The consequence of another view would be that you would consider carefully what relief ought to be given in cases of cruelty, and then comes in the point put by Lord Gorell, that you may have cruelty of such a character that it ought to be a ground for divorce as well as separation.

15,598. I was coming to that, as to the grounds on which divorce should be granted. You would make simple adultery on the part of the husband or wife a ground for divorce?—If you are going to give the husband divorce on the ground of adultery, I see no logical reason why the wife should not have it also.

15,599. That would be an issue which might be tried in a local court apart from the other questions of

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collusion or connivance, which would arise more especially in some cases?—I do not see why questions of collusion, connivance, and condonation are not to arise, where the wife brings her petition founded on adultery.

15,600. I did not mean to suggest that they would not arise, but they would be other issues which could not be tried properly in the county court?—Quite true.

15,601. As regards your proposal to relieve the poor man or woman who has a right to divorce, would bringing them all up to town, even if their expenses were paid, be an adequate relief, in the case of the parties and the witnesses who were thrown out of work for the time?—It is only a day. You cannot bear this burden and have absolute indemnity. I think you would go far enough. They lose their time if they can afford it, they lose their wages for the time being and they have to pay if they can afford it.

15,602. Have you considered the possibility of another divorce judge who would make circuits and go round the country to deal with these cases?—It is another means of dealing with it. I have not considered it because I found that, subject to the question of expense, there is an enormous advantage in having the practice in one court and before one or two judges. If you say you want three I am not prepared to say that I may not agree to it, and if you say it might be desirable to have a list in Manchester or Liverpool with a judge to try them, I am not against it. It does not militate against my principle. Let it be local in that sense, if the necessity of the case demands it, by all means. As far as public convenience is concerned, if you say the judge in the Divorce Court would have to go to Manchester and hear six cases, I do not think that there is very much in it; but if that was thought to be a wise course it does not conflict with my principle; but there are the officers of the court as well. There is the registrar, it is not only the judge, and you have some machinery to consider. I prefer that to the King's Bench judges being given general jurisdiction in divorce.

15,603. You prefer that to it being done at the assizes?—I wish to be impartial. I want to say, although the mischief, if you gave all the King's Bench judges power to try, would be less, still there would be mischief of the same character in dealing with local courts and county court judges.

15,604. You lose the benefit of counsel and the machinery?—You lose the benefit of the bar, and most of all, the benefit of the judge, who half his time is thinking over these questions and making it a tradition to follow the practice of the court, so far as it is modified from time to time by developments or decisions of the Court of Appeal, and the House of Lords.

15,605. I want to ask you about desertion. Would there be a point at which desertion might create a presumption of adultery?—A good deal depends on the ages of the people and circumstances. I should hardly like to say presumption of adultery. I think very slight evidence of adultery coupled with desertion might do. There might be a different standard of evidence. I should prefer, if I was going to differentiate, to adopt the line the Chairman put forward, namely, that desertion under certain circumstances was sufficient ground of itself. I do not like to presume one offence or delictum from another, but I agree in many cases that very slight evidence of association with another woman ought to be sufficient. There ought not to be the necessity for such strict proof of the adultery where there has been a long desertion.

15,606. There might be cases where it was desertion simply?—I had not thought it over until Lord Gorell put it to me. I can imagine such cases of desertion that the conduct, practically speaking, involves cruelty as well or is so grave that the law might be modified to allow the divorce being given in those cases.

15,607. I was suggesting that the presumption was a way of limiting the ground upon which divorce could be granted. You think cruelty alone would suffice?—I have always felt that. I think it hard where a wife

cannot prove adultery, and the cruelty has been long and persistent for her to get nothing but separation.

15,608. As regards penal servitude, it might embarrass the judge in pronouncing sentence?—It would embarrass me enormously. There is no more anxious part of a judge's work than sentences. It is thought to be automatic, but it is nothing of the kind. It is very grave; the mere fact that sentences vary as much as they do arises from the fact that we consider each case carefully. Take this case: suppose it is the balance between 18 months or two years, which is the extreme of imprisonment, or three or four years' penal servitude, and an appeal is made by the man from the dock, very often under distressing circumstances, to be lenient on the ground of his wife and children; if this idea is to prevail that the wife can get a divorce I must to a large extent disregard that altogether, or else allow my mind to be affected as to whether I will give penal servitude or imprisonment by the consequences of it.

15,609. It seems to me you would be pronouncing a decree of divorce in addition to the sentence?—I might be. It would introduce into the criminal law something solely founded on the Divorce Acts which is so utterly foreign to our administration of justice. I repeat, and I am sure the Solicitor-General will understand me, that I did anxiously think over the position of the woman before I came to this opinion, and I sympathise with her as fully as anybody, at the same time it is not a remedy I think she ought to be able to get, having regard to its very dreadful consequences to a large number of other people.

15,610. (*The Archbishop of York*.) You said your objections to the control of matrimonial causes in a local court would be modified in the case of undefended suits?—If there is sufficient protection against improper divorce.

15,611. Is not one of the protections you speak of the assistance of the judge and a highly expert and trained bar and body of solicitors?—Certainly.

15,612. Even in a county court that protection would be less likely to exist in the county court than it does now?—It would not exist. If you were to establish a system of county court divorce, and if the parties were always represented by counsel, which I think necessary, that would involve considerable expense in itself, and I think it is essential that you should have the protection of the bar.

15,613. Would not that same point apply to the suggestion of judges, either the High Court judges or an additional number of Divorce Court judges, going round on circuit?—Not quite so much, because the bar is always there on circuit. You would not get the same bar, not the skilled bar, but barristers who not infrequently appear in the Divorce Court. It would exist to some extent but not so gravely.

15,614. With regard to recrimination, do you think that on public grounds and the ground of the administration of justice, that it is desirable to maintain the principle of recrimination?—I do not quite accept the view that Lord Gorell put to me, that it ought to be properly called recrimination. I understand that has been a view which has been expressed, but that is not the way I regard it. The Divorce Act said you shall get certain relief, but it is relief of a character that you ought not to get, if you do not come with absolutely clean hands into the court. I think if we once said no matter what the husband's conduct has been or the wife's, if he or she can prove adultery, he or she shall get divorce, you open the door to breaking up the marriage contract almost by mutual consent. The one safeguard that we have now is, although the woman has committed adultery, the husband cannot obtain a divorce, if he has committed adultery. I am not introducing other things.

15,615. You feel on public grounds that it is a principle of importance as discouraging looseness of living?—Yes. I do not regard it from the pecuniary point of view, but from the point of view of the administration of justice.

15,616. And with regard to your view as to the importance of the office of the King's Proctor, or a

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similar office, you alluded to the difficulty of his knowing the facts. These difficulties would be greatly increased if jurisdiction in local courts were to be combined with absence of all publication of reports?—Certainly it makes it all the more necessary, if there is only going to be publication of the results, that the hands of the King's Proctor should be strengthened in order to get at the real facts.

15,617. With regard to your suggestion that the proper way of dealing with the admitted difficulties of poor people to avail themselves of the relief the law provides is that the State ought to bring them to the highest tribunal, rather than interfere with that tribunal by bringing the court to them, you would be prepared, I understand, to leave a good deal to the discretion of the court as to what constituted a right to sue *in forma pauperis*?—Yes, a considerable proportion of what I recommend has been in existence in Scotland for some time with regard to what is called a pauper litigant. Lord Guthrie no doubt knows more about it than I do. If you are going to recognise this grievance—it is not an evil, but a grievance—and remedy it, I think you ought to remedy it in some way which will not impair the court.

15,618. You fix no limit of income?—No, because I think that the discretion of the court should be large. Practically it would work out that they would get what assistance they required.

15,619. You think that the discretion of the court would be sufficient to deal with difficult cases. Lord Gorell mentioned to you the cases of the clerk and the small business man?—Certainly.

15,620. Would you put it on general grounds you feel that there must be some expense involved in securing the dissolution of every matrimonial contract?—Some expense to the State, you mean.

15,621. Yes, in securing for that issue a highly competent court?—I think so.

15,622. But that while that expense operates hardly on the poor, the State should bear the larger part of the expense?—As it does at the present time in proving crime.

15,623. In regard to the amendment of the law, you thought that logically, and therefore, I suppose, legally, the wife and the husband ought to be in the same position as regards adultery?—I do not think you can say legally, because it is not legal now at the present time. I said logically because I do not see any principle by which you can depart from the wish to keep up the marriage contract.

15,624. I want to get at whether you suggested that the court in some cases, where it thought the wife was acting unjustly to the husband because of special circumstances, might have the right to refuse divorce to the wife, if the law allowed her to have it on the ground of adultery?—That is not far off what I meant. I think you put it extremely well. The adultery of the petitioner now under some circumstances is an absolute bar. If you look at the cases you will find that there are cases where the husband was guilty of adultery a long time before, and the court did not deny relief; but the practice is, it is under the most exceptional cases only that the court will grant relief, where the petitioner has been guilty of adultery. All one can say is that one would like the court to have some discretion in a case in which the wife relies on adultery solely.

15,625. In your evidence in chief you said that you suggested some means by which the judge could act rather as a mediator than as a judge. I am suggesting your mind is going further than that, and you would be prepared in the case of any amendment to allow the judge in some cases to refuse the wife the remedy which she sought?—I am afraid that my opinion is not of very great value. I would rather leave it to the court, but from the point of view of rights it is very difficult to define. We have put something of the kind into a recent Act of Parliament. If the court is of opinion, under the circumstances, that injustice would be done, it may refuse the divorce, something of that kind, but I have not had sufficient experience of the actual working of the system to know whether that would be sufficient. I do not know what Lord Gorell's opinion is.

15,626. (Chairman.) It puts a task on the judge?—I do not see my way to adopt that as being possible.

15,627. (The Archbishop of York.) I wanted to know how far your opinion went?—I do not think my opinion further would be worth much.

15,628. With regard to lunacy as a ground for divorce, you spoke of permanent lunacy. Would you be prepared to define the kind of lunacy?—Incurable lunacy I meant when I said permanent.

15,629. Would you include in permanent lunacy permanent nervous breakdown, which is not accompanied by any danger to the life and comfort of the home?—No, I do not think I should. I want as far as I possibly can to encourage and support the idea that, as far as possible, the husband and wife are to bear one another's troubles, which I think is the real basis of the contract, but where you get the case sometimes happening shortly after marriage—it occurred in a member of my own profession, the doctors agreed that it was a case of hopeless lunacy, lasting in this particular case I have in mind for a great many years, absolutely hopeless. I admit it is a rare case, but I think it is a right thing it should be a ground for divorce.

15,630. The difficulty is to arrive at any principle?—Certainly.

15,631. Upon which lunacy can be put down as a ground of divorce. Some witnesses have suggested it should be necessary to prove that it was necessary for the person to be detained in an asylum?—Do you mean to be detained temporarily?

15,632. Permanently?—One has some little experience in lunacy cases, and there are not a few cases where lunacy has occurred, and two or three of the most experienced doctors agree that it is incurable. That is the case I have in mind.

15,633. Have you considered if lunacy were put down as a ground of divorce, that it would be exceedingly difficult to get a definition to put in the Statute. The possibility that the becoming insane might lead to divorce might greatly aggravate the tendency on the part of some unfortunate persons to become insane?—I should not have thought that. I do not know enough about that to express an opinion.

15,634. You have not considered it?—No.

15,635. Your evidence would only go so far as to permit lunacy if it were really permanent and incurable, on the ground that it was practically, to use a legal phrase, an act of God which made marriage impossible?—Yes, not only impossible, but highly injurious to the State that it should continue.

15,636. You have expressed no definite opinion about desertion as a cause. Do not you say on general grounds if there are dangers of collusion in regard to adultery, that these dangers would be likely to be very much greater in regard to desertion?—As an abstract statement I agree, but Lord Gorell put it to me that there might be such a case of desertion amounting under such circumstances and being so long as to justify divorce. That state of things would negative collusion because one cannot imagine an experienced judge dealing with a case, where there was any possibility of the suggestion of collusion by the wife, as being such a case of desertion. Therefore, the facts put by the Chairman impliedly negated collusion.

15,637. You agree the shorter the time of desertion allowed, the greater the danger of collusion?—I think I said to the Chairman that I had not considered it, but I was not prepared to say that there might be cases in which the desertion was of such a character and for so long, that it might be a ground of divorce as, for instance, when it really amounted to desertion and cruelty in effect.

15,638. You would agree without pressing further that matter that this was another of those matters that put so much importance on the discretion of the judge, and that it again demanded that the judges should be men of very special experience?—Certainly, that is an instance, and I am obliged to you for putting in the concrete what I meant, of the absolute necessity for experience and uniformity.

15,639. With regard to penal servitude as a ground, if I may say so, what you say as a criminal judge entirely corroborates what I know as a prison chaplain

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of six years' standing from within, you feel that the whole principle upon which our prison administration is now based is not so much punishment for what has been done as the hope of a reform for the future?—Reclamation and punishment almost hand in hand, reclamation first, if you can.

15,640. In reference to what the Solicitor-General put to you, I gather your feeling is that nothing should be done by the State to put anything in the way of the wife at the beginning of a sentence, which would cause her to abandon her primary part as the chief assistant of the State in the reclamation of that criminal?—That is my view. I am glad to hear what you said as to your experience as a prison chaplain. All I can say is I have seen letters written when the prisoners never thought anybody would see them, not written for a purpose (I often see them written for a purpose), letters written to the wife by the most hardened criminal in which the expressions were most touching. There could be no suggestion that they are feigned and there was no notion that they would be seen. They are not sent in order to get a remission of their sentence. I am sure that the affection for the wife and family is a living influence for good with prisoners, and it should not be considered because they have broken the law and gone to penal servitude that they should be treated as people who have broken the marriage contract.

15,641. It is not for me to give evidence, but as a constant intermediary between prisoners sentenced and their homes I should absolutely bear that out, and should say very often that the affection for the wife grew as the time went on and as the end of the sentence approached?—You have endorsed what I have said, and I am glad to hear you say so. I have known of the days being counted on both sides, by the prisoner and by the wife.

15,642. With regard to your expression of opinion that you disliked, I do not know whether you went so far as to say that you disapproved of, permanent separation apart from divorce—did your opinion go so far as to say that you disapproved of that remedy being permitted?—I am afraid that my opinion is not worth very much. As I understand separation orders do come before the magistrates from time to time.

15,643. I am speaking of judicial separation in the High Court?—I beg your pardon. I did not mean to express an opinion against judicial separation short of divorce in a proper case.

15,644. I wanted to make that clear?—It had not occurred to me that you were referring to that, but I think that the present administration of the law where in certain cases you can only get separation, is not an unwise one.

15,645. With regard to publication, in reference to the point put to you by the Solicitor-General, has it occurred to you that possibly some of the difficulties which emerged in the questions in answer to the Solicitor-General might be met if, when and as he desired, the judgment were published with a statement of the names of the parties and an outline of the facts?—I should never object to the judge's judgment being published, whatever the reason, because the judge never puts into his judgment any indecent details. If the object is to differentiate between the degrees of immorality, or of culpability of the particular co-respondent the Solicitor-General was defending, under those circumstances I should say it would be right to be done by the publication of the judgment of the judge.

15,646. It seemed to me, according to the Solicitor-General, that it was hard that a man should simply go out to the world as having had such and such decision recorded against him without any opportunity of giving any particulars?—I am bound to say, if it is to come within the law, permitting a divorce for adultery, I do not think that publication in the list is the place, to whitewash him.

15,647. You will not expect me to doubt that. I was suggesting some of the other difficulties?—I accepted entirely the suggestion that in such a case a man ought to have some opportunity of saying: "I was

"not as bad as I might have been because I did not know that the woman was married."

15,648. (*The Solicitor-General.*) I did not suggest that he should be whitewashed, but that there should not be such a degree of black in the wash?—If I may say so, I agree both with his Grace and with the Solicitor-General. It seems to me that the suggestion of publishing the judgment of the court would be a better way of putting it than anything.

15,649. (*The Archbishop of York.*) You have had a great experience as a criminal judge. I want to ask you, as I have put to many witnesses: Is it your experience of late years that there has been a very marked development of the precocity of the sexual evil among young people?—It does not come very much before us. The fact that immorality occurs at an earlier age does not come very much before us, but I am bound to say, so far as it does come before us, that there has been brought to my knowledge immorality at an earlier age than I was prepared to expect. Whether that is a modern development I am not prepared to say. I know it does appear before us at the ages of 14, 15 and 16, and very markedly in the case of girls. That is the extraordinary thing. I have tried extraordinary cases of offences under the Criminal Law Amendment Act, that is to say, connection with girls under 16, where girls of 13 and 14 were a terror to the place. You asked whether that has been a modern development. I do not know, but I can well imagine that is so, seeing there has been a large extension of the publication during recent years of these details with regard to sexual intercourse and with regard to immorality. It may be the cause of it. Even during my ten years on the bench I have been horrified at the extent to which girls under 15 were familiar with every aspect of sexual relations and were as much a temptation to grown-up men as grown-up men were to them.

15,650. Have you become aware of the apparently appalling evidence of hideous precocity in this matter amongst children attending elementary schools?—Only in this sense, my attention has been called to the fact as the manager of a school that it was necessary to guard against these things at an age I should have thought a few years ago absolutely unnecessary.

15,651. You say, speaking generally, you think the freedom with which young people read these details in the papers may largely contribute to it?—Exactly. I am satisfied that is so, taking girls of the age of anything above 12 or 13. I am satisfied that this literature does largely promote a tendency to immorality between them and boys, certainly I have not a doubt about it. Forgive me saying this, I think you asked whether that was on the increase. I am not in a position to say that is so. My experience is confined upon that to the last 10 years; but that it is to a certain extent the direct consequence of this literature I have not the smallest doubt, although this literature has been going on for more than ten years.

15,652. May I, in conclusion, venture upon a general question, which you need not answer unless you feel disposed to do so. Having regard to all these evils, which have apparently spread into every class of the community through the discussion of divorce and its proceedings, and the widespread idea of divorce, would you be prepared to say that the public evil which divorce proceedings have caused almost outweighs the relief it has brought in some private instances?—No, I do not think I should be prepared to go as far as that. I think I should have voted against the Divorce Acts originally, and my present experience makes me think that they had not better be upset, but I am not prepared to say that the relief given is outweighed by the public mischief, particularly if we disregard the public mischief which I think can be cured, the very thing your Grace has been referring to, the publication of these horrible details which leads to immorality. If that is cut off, a great part of the mischief would be taken away. I attach enormous importance to the evil done among poor boys and girls by the penny and halfpenny newspapers.

15,653. Even so you would feel that on public grounds the State would be wise not to attach too much importance to cases of individual hardship and

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neglect. All the public issues are involved in any large increase of the jurisdiction in divorce or the grounds of it?—I should not be disposed to render divorce easier than it is at present, but I am not prepared to say that with proper safeguards the position of wife and husband ought not to be made the same.

15,654. With that exception?—I should not be disposed to repeal the Divorce Acts now, and I do not think one ought to say that the evils, if incurable, are such as to outweigh the advantages to be obtained under the Divorce Acts.

15,655. (*Lord Guthrie*.) I gather in forming your views as to the propriety of retaining divorce jurisdiction in the High Court you have had three things in view, first of all the importance of the subject-matter to the spouses, to their children, and to the State?—Certainly.

15,656. Secondly, the difficulty involved in the cases, particularly in the incidental questions, such as connivance, collusion, jurisdiction, and so on, connected with them?—Yes.

15,657. You see the necessity for having not lax but strict, and not diverse but uniform administration?—Yes.

15,658. To which of these do you attach much weight, the importance or the difficulty, or the necessity for strict administration?—I do not think I attach more importance to the one than the other. I think they are all three essential for the proper administration of divorce, and particularly uniformity. The difference of standard, which is of necessity involved, and the weight to be given to evidence by different judges who do not meet and cannot act, so to speak, on a code, would create a great evil.

15,659. Your opinion is not affected by the undoubted fact that many cases involving divorce are quite simple?—Certainly not, because you have to see in dealing with those simple cases that you safeguard against the evils which may accompany them. The fact that many are simple does not lead me to think that we ought to withdraw our care in seeing that the law is properly administered.

15,660. Your opinion is not affected by the view you hold, that so far as mere competency goes, the county court judges as a rule with sufficient experience are perfectly competent?—Certainly, if you will train up not a large number, I should say at the outside two or three, county court judges to do divorce work, and that practically alone, taking competent men and training them to be judges, but those are not the surroundings of the county court judges at present.

15,661. In point of fact, is it not the case that this view does not involve any new principle; both in the criminal law and in the civil law, there are cases for which the High Court judges are privative?—Absolutely.

15,662. Murder, bigamy, treason, and so on in the criminal courts, and slander and breach of promise in the civil courts?—In both branches.

15,663. Many of these are simple cases, bigamy for instance?—Libel and slander especially so.

15,664. You have in all these cases the elements which are here to be found in the divorce question, the importance and the difficulty and the desirability of having strict administration?—Yes.

15,665. In regard to what you said about giving assistance to the poor in divorce cases, how do you distinguish a case of slander of a poor man who can only have his character cleared by coming to London?

(*Chairman*.) Or assizes?

(*Lord Guthrie*.) From which he may be remote in distance. He may be, may he not, in a similar position to a poor man in a divorce case now?

(*Witness*.) Theoretically yes, but practically no, and I will tell you why. When there is an undoubted slander which will carry 10*l.* damages, as a rule it does, or anything, he knows he gets his costs and there is always an honest solicitor who is found to take it up. There is no practical evil. We try cases of slander at the assizes frequently, which shows that no evil exists. It is a strong reason for the maintenance of the circuit system. Take Wales for instance. I have pointed out

the importance of a man having his character cleared in his locality by a judge, but there is no evil, because if the case ought to be brought, some solicitor will take it up.

15,666. If the plan you have mentioned of assistance to the poor in the way of dispensing with or reducing court fees, and in the way of providing the expenses of the witnesses, and in the way of having free counsel and agents, were advised, would it not also involve a system which would prevent cases which ought not to be brought from being brought, such as we have in Scotland with a body of people responsible to the court?—I am glad you mentioned it, because it is what was in my mind. I ought to have mentioned as the basis of this free legal assistance that there is to be inquiry as to it being a proper case. At present the only safeguard is the certificate of counsel, which is not as good, and it will interest you to know that we are forming rules on your Scottish system for a committee of inquiry into such cases, to be taken up by solicitors and barristers offering their services.

15,667. In regard to lunacy, it is the fact that if divorce were granted for lunacy it would be introducing an entirely new principle?—I agree.

15,668. Namely, divorce on account of misfortune and not fault?—I agree. I am not at all surprised that people do not agree with me. I accept that absolutely.

15,669. I should like to know in what respect you distinguish lunacy from crime. I gather the three points which were indicated were, in the first place, calamity. Your Lordship said a calamity brought on the wife by the husband's misconduct, but one would have thought that a calamity brought by Providence was a fortiori?—A fortiori, I agree, only you do not punish Providence.

15,670. If it is a calamity, why should the man be put into the position of possibly finding himself divorced when there is no fault?—Logically, you have put me into a corner. I agree absolutely, but all I can say is this, that I have limited it to the case of incurable permanent insanity, and I have always had the feeling that as far as possible marriage relations with a person who is an incurable lunatic ought as far as possible to be stopped from every point of view. You may say it is not logical, and I accept the statement, but it seems to me that it is a different class of case altogether.

15,671. You would so safeguard it that it would be a rare case?—Yes.

15,672. I understand that there are two classes of patients who would be certified as incurable. There are those where it is organic senile paralysis, where it is certain cure was impossible, and those where you have delusional insanity, but where doctors might differ. You would limit it to the first case?—No, but a long continuance of it, so that there would be a practical safeguard by long continuance for, say, three or four years and no improvement, and if responsible independent medical men would say it was incurable. I agree it is a very rare case.

15,673. You desire to exclude any cases where the element of injury to possible recovery would arise?—Certainly.

15,674. On the same principle as in the case of the prisoner?—Yes.

15,675. In regard to publication, has there ever been a prosecution for indecent reporting of details in a divorce case?—I really could not answer you. I can give you the cases where it has been for publication.

(*The Solicitor-General*.) I do not think there has been any case so far as I know.

15,676. (*Lord Guthrie*.) I am told by Lord Desart that there has been no case?—I could give you the prosecutions apart from that.

15,677. You do not see how the Act could be amended to meet the point?—Except by prohibition. I think it is not obscenity and not indecency, as it would be understood in a criminal court.

15,678. Would not your principle of preventing publication involve shutting the court?—No, I should not shut the court. I have always been in favour of the judge having the power to exclude the public.

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15,679. In whose interest is it that people who have no relation to the case should come in such crowds that they stand in queues waiting outside on the chance of being admitted? It is not in their interest?—It is not in anybody's interest, but then we are getting upon rather dangerous ground. When I say dangerous ground I mean difficult ground. There is a very great reluctance, and I think a desirable reluctance, a well-founded reluctance, to private courts of justice. In suits for nullity it is maintained, and they are heard in camera. It arose in a case of the same kind against a schoolmaster, where he had an action as to malpractices by his boys, and the late Mr. Justice Denman cleared the court. There was a great deal of outcry about it at the time, and a leading member of the bar insisted on forcing his way in and wanted to bring actions and things of that kind. I agree from a moral standpoint that a queue of people, who are often there to keep places for worse people, is unjustifiable. At the same time I am not prepared to close the doors of the court, but I am prepared to give the judge discretion to close the doors in a proper case, which is a different thing altogether.

15,680. In cases heard in private in England, barristers have not the right of entry?—No.

15,681. That is not so in Scotland?—With us if the case is heard in camera nobody can go in except the counsel and the parties. I think I am right in saying that.

15,682. (*Chairman.*) I think so?—I am sure that is so in the King's Bench Division, but Lord Gorell will correct me if I am wrong as to the Divorce Court. I will not mention names, but there was an important *habeas corpus* case heard before Lord Justice Field in which I was counsel, which involved improper relations and conduct of the parties, and it was heard in camera, and Mr. Justice Field ordered it to be heard in camera, and nobody was admitted except counsel and the people in the case.

15,683. (*Lord Guthrie.*) Young barristers and solicitors must learn their business. Suppose you modified the rule and allowed barristers to come in?—I think that is a class of experience young barristers and solicitors can do without.

15,684. On the question of the court being open, would it not meet your view if the court was open for solicitors and barristers?—No, I should consider that the young barrister or solicitor is only there as a member of the public, and if he says "I want to learn my practice," I should tell him "You are better without it."

15,685. I agree with that, but would it not meet the view of sufficient publicity?—I do not think so. I prefer that the court should be public and open unless the judge thinks it a case where in the public interest it ought not to be so. Then he can keep out everybody.

15,686. I quite understand. Supposing no extension of the grounds were resolved upon, do you not think that at all events there might be an extension of the definition of adultery to include all sexual offences, for instance, a man convicted of malpractices with young children?—I think there is a class of case on that ground. I think adultery with venereal diseases has been held a ground of divorce, but I am not sure. I do not think I could go so far as saying that lewd practices should be a ground of divorce, but I think certain offences should be.

15,687. You mean certain sexual offences?—Yes.

15,688. That might be done by including them under the head of adultery, by extending the definition of adultery?—Yes.

15,689. (*Sir Lewis Dibdin.*) There is one question I want to ask you which relates to a matter which occupies the minds of a very large number of people outside, and your evidence is of very great interest to people outside. I gather, and it is obvious from the whole trend of your evidence, that your view is very much against the loosening of the marriage tie in any way?—Certainly.

15,690. Or making it more easy to obtain divorce?—Most certainly.

15,691. But there are certain matters which you are in favour of for enlarging the grounds of divorce?—I do not put it as in favour of enlarging, which I should not be prepared to say might not be prudently done.

15,692. You would not oppose cases of permanent lunacy, bad cases of cruelty and bad cases of desertion?—Yes.

15,693. I want to ask you, with regard to those matters, what relation your view has to the teaching of the New Testament. Does it agree with it, or is it immaterial, or what?—I do not know really. Of course it is not immaterial the least in the world, and in one sense all divorce is against the New Testament. I think I should refer you to the Archbishop of York.

15,694. Your evidence is of such importance I feel bound to ask you the question?—I am only giving evidence as a judge. If I say something about the New Testament the Archbishop of York may say I am wrong.

(*The Archbishop of York.*) No, I will not.

15,695. (*Sir Lewis Dibdin.*) You will sufficiently answer my question if you say that you do not wish to answer it?—To treat the matter seriously, I would rather not in one sense. You will understand that I would answer any of your questions with great pleasure, but it goes further than I wish to. I have said already that I am rootedly opposed to any weakening of the marriage contract. I accept the position of the Divorce Acts, and accepting the position of the Divorce Acts, I conceive, as the Chairman has put to me, that there may be some cases which within the principle of the Divorce Acts might be a reasonable alteration of the law.

15,696. It is because your view is so marked I am sure the public would be glad to know your view with regard to the question I have asked you, but I do not press it?—I think it would be presumptuous of me to express an opinion on the New Testament.

15,697. (*Judge Tindal Atkinson.*) With reference to collusion, which you say is a matter of considerable difficulty, I suppose that the judge himself can hardly detect collusion in most cases?—Very often not, excepting rare cases, which I referred to, and as to which Lord Guthrie supported me, where there is something very suspicious in the evidence. A case in which the judge did suspect it, and where I was led to suspect it, was where the solicitor's clerk went down and caught the people. Nine times out of ten that is a collusive case, and that is what came before me more than once. The evidence of adultery was that of a solicitor's clerk, who caught the people. Very often they had not committed adultery, but they were caught under circumstances in which they might have committed adultery, and the judge not infrequently said, "I do not like this, it wants further investigation."

15,698. Then the detection of collusion almost entirely rests with the King's Proctor?—Very largely, I will not say almost entirely, because the circumstances may be such that the judge immediately suspects it, and directs the papers to be sent to the King's Proctor. I agree in a large proportion of cases it does rest with the King's Proctor.

15,699. Assuming that the county court had jurisdiction in divorce, the registrar would be able to assist the King's Proctor in getting the necessary evidence of collusion?—I do not think he would. He might be able to tell the King's Proctor that it was a suspicious case, but the King's Proctor will get the evidence, and not the registrar.

15,700. The King's Proctor, I suppose, has to send down to the neighbourhood to make his inquiries?—Or employ agents.

15,701. Sometimes perhaps the registrar, who is the most important solicitor in the place?—I am not suggesting there may not be cases in which the registrar could give material assistance, but as a system I do not think it is a proper duty to put on the registrar, and I do not think he would be the right person to make the inquiries, as a system. They are not made by an officer of the court except in the sense that the King's Proctor is an officer of the court.

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They are not made by Lord Gorell's registrar, or any person of the kind.

15,702. The King's Proctor has to get the information?—There are registrars and registrars. I accept there may be cases where the registrar would be very useful for the King's Proctor to be in touch with.

15,703. I wish to ask one question about witnesses. Your Lordship suggests the State should pay the expenses of the witnesses coming to London?—Yes.

15,704. If you were to take a case from Cornwall, that would involve an absence of the witnesses of about three days?—It would, I agree.

15,705. Whereas if the case were tried on a fixed day in the local county court it would not involve the loss of more than a few hours?—Probably one day.

15,706. That is rather a serious matter for the poorer part of the community?—I agree, but the cases that come such long distances are not many. I agree it is one of the things you have to deal with.

15,707. Is there not a very important question connected with local jurisdiction, and that is with reference to the custody of children. I suppose you will admit if children are in a house where one of the persons is grossly immoral, they ought to be taken out of the custody of that person at once?—Yes.

15,708. Assuming you can do so. How can that be dealt with in the cases of poor people a great distance from London?—It is largely dealt with under the Protection of Children Act now, but I am not prepared to say that the question of the custody of children—I am glad it has been mentioned—does not involve very difficult considerations. I am not prepared to send cases of the custody of children to judges who have not experience in the Divorce Court. After all, the county court judge goes to many places: it is not very local; he is a county court judge and goes to a large number of places.

15,709. He is very accessible to the party?—I think the actual evils with regard to children's association with people living an immoral life have been enormously improved since the Act I took through the House of Commons in the year 1898 and the last Act which I took through the House of Lords, in 1904 I think it was.

15,710. I have a case in mind of where the children ought certainly to be removed?—I accept your view that there may be cases where it would be desirable a county court judge should have some power to take children away from improper surroundings.

15,711. One other question with regard to juries. Your Lordship knows they are drawn from the same panel, both in the High Court and the county court?—Is that so?

15,712. Yes?—I am bound to say the juries in the High Court are very bad just now. I am obliged to you for correcting me; I was not aware of that. Do you get the same class of people?

15,713. I have a good deal of experience in county courts, and I should say in many cases my juries are superior to the High Court juries, particularly in the country districts?—All I can say is I am very dissatisfied with the present condition of juries in the High Court. I can tell you that.

15,714. With regard to congestion of business in the county court, your Lordship has not gone into the whole question of the state of business in the county court, or how many days the judges have in hand?—No.

15,715. Did you carry the Act of 1888 through the House of Commons? I think you did?—Probably I did.

15,716. By that Act, section 8, you provide that there should be 60 judges in the county courts, and at the present time there are only 55?—I refer you to the Solicitor-General. But still, what I want to say is this: the places, where it has been suggested there should be local jurisdiction, of the most importance are the places where the judges are hardest worked, Manchester, Liverpool, Leeds, Bristol, Swansea, Cardiff, and those places. I do not suggest there is no spare time in some places, but you would not give divorce jurisdiction to a judge sitting in Bedfordshire, or a judge sitting in Lincolnshire. I said if you are

going to have selected county court judges they would be required at the places where a judge is hardest worked.

15,717. To get rid of the congestion, I suggest in those districts the Lord Chancellor could appoint five judges?—I agree, and pay them higher salaries, too.

15,718. I quite agree with that?—That is why I referred you to the Solicitor-General.

15,719. (*Chairman.*) The questions which have been asked have suggested a few points, if I may be permitted to put them. With regard to any expenses that might be involved in carrying out your suggestions, you would make those State expenses?—The Treasury, I think.

15,720. Or make them come from the county?—The Treasury, I think. I do not think there is much in it one way or the other: it will not be a large sum. I should, personally, make them Treasury expenses, but I do not think if you put them on the counties it is serious.

15,721. Do you think, as a matter of practical moment, that we should be as readily met on such a point as that as by letting the High Court try these cases in such places as Manchester and Liverpool?—That depends upon the extent to which people are influenced by what influences me, the desire of having an experienced High Court Judge. I do not consider it would be an improvement on the present system to have the King's Bench Judges doing it. If the Divorce Court Judge were to go circuit with his registrar and hear applications, I should not object to that at all. It means going to a number of important centres.

15,722. You know at those important centres there is now a large local bar, many of whom come to their cases if they get them?—I think very likely the Divorce Court people would go, too, but that is a method of dealing with the evil which would not possess the disadvantages that the local courts, the county courts have.

15,723. It would, in fact, be the High Court sitting. I believe it has power now, but it never has been used, to sit at different places than London?—Has it? I do not remember that.

15,724. It is "in London or elsewhere" in the Act, but that power has not been used. You have been asked whether there was a difference between lunacy and illness. Do you think there is this to distinguish them, that in the lunacy cases there is what you might call a civil death?—I am not sure I should call it that logically, but still there is that distinction.

15,725. But still is there not a great danger of the effect being hereditary?—I have mentioned that.

15,726. You were asked some questions by Sir Lewis Dibdin about the possible scriptural aspect of this matter. Have you made any special study of that at all, because if you had I should ask you whether there is any definite agreement?—I would rather not express an opinion upon it. I have not made a special study of it beyond reading.

15,727. There is one other point on publication. I only bring this out to see whether it would accord with your views. If publication were prohibited, I take it it would include a prohibition of publication anywhere in the country?—Yes.

15,728. Including Scotland and Ireland, and the introduction into the country of papers which may be printed elsewhere and circulated here?—That is only machinery. The real evil is in the cheap Saturday and Sunday press.

15,729. All I meant was, it is necessary to point that out, to guard against such possibilities?—It would have to be thorough.

15,730. Such as being printed just over the border and brought in?—I am sure the Scotsmen would not do that.

15,731. Would you be in favour of the removal of the present restriction on the judge or counsel or anybody else in asking any question of the petitioner when in the box as to his own conduct? That is one of the reasons why I have found that the petitioner can come forward and keep his own case back, never

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being asked questions?—I am in favour of the removal of that restriction, certainly.

15,732. Does your view about criminality take in also the case where the woman might be a criminal?—Certainly, I said so. I said both husband and wife. It is very much less common to have penal servitude for women, that only occurs in rare cases.

15,733. There is this distinction, at any rate, that the man left alone is obliged to get hold of somebody else to look after his house, and that does differentiate his position in the direction of immorality in a way?—You will have gathered I dealt with that question on principle, which I think you ought not to infringe at all.

15,734. Would your experience lead you to think these cases had better be left to the judge and not to the jury?—It is rather a difficult question. I am in favour of the trial by judge in such cases, but I can imagine people wishing to be tried by jury, and here again you get at an important principle.

15,735. You are aware that in the old Ecclesiastical Courts the judge alone had jurisdiction?—Yes.

15,736. Although the issues were practically the same?—I agree, that was altered by the Divorce Act.

15,737. You would be in favour of leaving the jury if the parties desired it, or at any rate a discretion in the judge?—I should be in favour of leaving the right to a jury as it is. I think it is a check upon the judges, and I think it is a desirable check on judges in some cases to have juries.

15,738. The reason I ask is that it seems to inflict some hardship on the London juries to take the whole of the country cases?—I am afraid the attraction of

sitting in the Divorce Court outweighs that. There are not a large number of cases with juries.

15,739. A large number are heard without a jury?—I should not like to destroy the right to a jury.

15,740. (*The Archbishop of York.*) When you speak of litigants having the right to a jury, would you extend that to the delicate matters you speak of, as to lunacy, which is an issue of fact?—I have not thought about it.

15,741. A jury would be so exceedingly sympathetic?—I think it might be worthy of consideration whether divorce on the ground of lunacy should be tried by the judge alone. My real safeguard there is that there should be before the court independent evidence, and, if you like, a certain number of independent expert doctors, who have come to the conclusion that the man is incurably insane, as is not infrequently done where questions arise. They are sent to investigate the case.

15,742. (*Sir Lewis Dibdin.*) With regard to the absence of a jury in the old Ecclesiastical Courts, they had not such a grave issue before them, because they did not decree divorce *a vinculo*?—No, *a mensa et thoro*.

(*Chairman.*) They had the same facts, adultery or cruelty, just the same.

15,743. (*Sir Lewis Dibdin.*) With a far less grave result?—Accepting that, I would answer in the same way. I should rather accept the jury upon the basis of the existing laws.

15,744. (*Chairman.*) I am very glad we have had the advantage of your evidence. I should like to say I think you have rendered a great public service?—I am glad to have come: it has been a very pleasant experience.

The Right Hon. The EARL OF DESART, K.C.B., called and examined.

(*Witness.*) Might I say one thing before I begin my evidence. It is not a matter of very much importance, but I could not help seeing some evidence that Mr. Freke Palmer gave yesterday, in which he apparently—at least I cannot read it in any other way—makes the innuendo that the King's Proctor does not intervene in the case of rich people, but that he does in the case of poor people.

15,745. (*Chairman.*) I had proposed to ask you about that?—I mention it, I do not know whether you think it worth my contradicting it, to get it on record.

15,746. Would you like to say now what you wish to say about it?—I can only say that really I should have thought it was obviously the case that there is no possible foundation for anything of that kind being said. It is no doubt true that the larger number of cases in which the King's Proctor intervenes is in the cases of relatively poor people, not necessarily very poor people, for the reason that theirs constitute the very large majority of divorce cases. It is possible there may be another reason, which is that if there be cause for intervention in the rich man's divorce by reason of collusion, or other offences, he is probably better advised and better protected, and takes greater precautions, so that he is not discovered.

15,747. I rather think Mr. Freke Palmer mentioned that?—It is not the fact. In my time there were several cases of very rich people. I remember one case which lasted four or five days, a very serious case. I wanted to put on record that I could not admit that suggestion. I do not think it is a matter of much importance.

15,748. You were for a number of years the Treasury Solicitor, and as such were King's Proctor?—Yes, for 14½ years.

15,749. And you retired last year?—Yes.

15,750. I think it is because you have had that long experience, and your successors have not been so long in office, that I ventured to trouble you to come before us instead of your successor?—Yes, I understand that.

15,751. I will take your evidence as briefly as I can, because many of the points in your memorandum have been so thoroughly before us. With regard to the question of giving local jurisdiction, will you tell us what your views are upon that?—My opinion is against

that, because, to begin with, from my point of view, which is not a lawyer's point of view, but a matter of opinion, I think divorces should be treated extremely seriously. There are a great many issues that may arise in any undefended case as to collusion and a number of other things, and it is of the utmost importance to the suitors and the public that those cases should be dealt with not only by judges specially qualified, but with the experience that can only be acquired by constant practice in dealing with these cases. It seems to me to be no reflection on the county court bench to say in no case can those gentlemen have to begin with, or acquire by any volume of divorce that is likely to come to them, the experience that is necessarily acquired by two judges sitting habitually and trying divorce cases, and acquiring an aptitude for dealing with them, which I do not think any county court judge could have or could acquire. I attach the greatest importance to these experienced judges dealing with the cases, and also to the existence of the bar the Divorce Court has created, composed of gentlemen who feel a particular duty to the judges, that they should not be misled in undefended cases, and who have from experience special aptitude for discerning any suspicious circumstances that may arise in cases in which they are instructed. I feel sure that the advocates who necessarily would conduct these cases before a county court judge would neither have the training nor the opportunity, if indeed they felt the duty, of doing what the Divorce Court bar do habitually, and will do not only because of their personal position, but because of the public opinion created by the court itself, which they cannot depart from. I do not want to reflect on any solicitors who appear before the county court, but it is difficult for a man in close contact with his clients to come forward and tell the court something that may defeat the objects that client has in view: whereas when a case comes up to London—I am sure Lord Gorell will bear me out—Counsel, with the duty he feels towards the court, feels bound to say, "I must tell your Lordship this." That is a second circumstance. Then I think the trained and experienced staff attached to the Divorce Court constantly dealing with these things is a safeguard against impropriety. I should regret very much if the jurisdiction in divorce

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were given to any court except the Divorce Court as it is at present constituted.

15,752. You deal with the matter as between the Divorce Court, the Assizes, and the county court, and you prefer the first?—Yes. My objective would be to make it possible for the poor man to get to the Divorce Court: not to bring the Divorce Court to him.

15,753. That is the difficulty I should like you to grapple with. May I put this preliminary question. Do you see any reason why the interlocutory proceedings should not take place in the country?—I see no objection to that. My main objection is that the case should not be tried otherwise than by a judge of the Divorce Court. The trial is what I feel strongly about.

15,754. That involves either trying here or trying it in the country?—Yes.

15,755. Do you see any means of getting over the difficulty, both of expense and otherwise, time of the parties and such like, of bringing them all to London?—I think it would be more convenient to bring them to London, but I can conceive there might be cases in which the witnesses happen to be collected in a certain area, in which expense and trouble (or at any rate trouble and time, apart from expense) might be saved by a judge going down to try that case, or those cases: but as a rule, if the scheme I will suggest presently were adopted, I do not think there would remain much objection to all cases coming to London, except very occasionally.

15,756. There is one question which is apt to be overlooked in the cases if they come to London; you have a great many cases in which doctors have to come?—Yes.

15,757. That is largely so in that court for necessary reasons?—Yes.

15,758. They are in more difficulty than many in getting away from their work to come to town, and it is more expensive. That has to be borne in mind?—I am prepared to go the full length of my opinion for the sake of securing the Divorce Court. I should advocate expenditure by the State, if necessary a considerable expenditure by the State. If the policy which I advocate is the policy of the Government of the day, whatever it be, when this question comes up for consideration, and they take my view as to the importance of these cases being tried before the Divorce Court, then you would have the expense met as you have in criminal cases. If the Government of the day did not take that view, I say at once my suggestion would be impracticable.

15,759. Have you formulated any further scheme about it? You referred to a scheme?—Yes. I do not know how it would work out in detail; there may be considerable difficulties of detail, but it seems to me there might be three classes of people. The first would be the ordinary case where a man conducted it in the ordinary way without any assistance; then persons in the position of artisans, clerks, who, although they have means, have not means which would enable them to get to London and bring their witnesses and incur the expenses that attach to a trial away from their home. For those people I should be prepared to recommend the remission of court fees, or the partial remission of court fees, as might be necessary in the particular case; in fact, you would leave to them the obligation, and the only obligation, of producing their witnesses. I believe in that class of person you would not find that impossible. I do not think, where there are means, it is a hardship to say any litigant should be prepared to make some sacrifice and some effort so long as it is not excessive, so long as it does really—I will not say ruin, but so long as it does not affect his whole means of subsistence and deprive him of getting necessities for his wife and family. I think those people as a rule could afford to bring their witnesses, and I should not relieve them of that. Then there is the third class you call pauper cases. In those cases they ought to be put to no expense whatever; their witnesses should be brought here, the court fees remitted, and they should have counsel and, if necessary, solicitors.

15,760. As on the Scottish system?—Yes.

15,761. In addition to the Scottish system, the expenses of their witnesses?—Yes.

15,762. Even including the expense of a doctor?—Yes. I should not distinguish between one witness and another. That would be an accident of the case.

15,763. That would be a question for the State, or, rather, the Treasury, to consider?—The Treasury, I think, with respect, is a bogey; I do not know what is meant by the Treasury, but I suppose it means the permanent officials. They are only the advisers of the Government, and if the Government want a particular measure they will have it; the Treasury have nothing to do with it. I do not suppose the permanent officials were in love with the Act for Old Age Pensions, but the Government wanted it, and Old Age Pensions there were.

15,764. I rather meant those responsible for legislation would decide whether they would incur that expense, or the expense of sending a judge down. That is your view?—Yes. May I say, if I understand the proposal which has been made hitherto for local jurisdiction, it is that persons who had less than a certain income should be allowed to present their petitions in the county courts, and that persons who had an income above that should be left in their present position and come to the High Court. I speak with great deference, but it seems to me that if you create a county court jurisdiction it must be for everybody. I cannot believe in the two systems side by side.

15,765. You would add, with the right of removal if the defendant chose to provide the costs?—No, I go further than that. There would be no reason for the existence of the Divorce Court.

15,766. In London?—There would be the jurisdiction in the county court or the Assize Court, and there should be an appeal to the High Court; but whether you have it in the Divorce Court as at present or in the county court, I cannot conceive there being one jurisdiction for the rich and another for the poor. Divorce is of the same importance to the rich as to the poor man. The reasons why, rightly or wrongly, I consider in all cases it ought to go to an experienced judge, would exist in the case of the poor just as much as in the case of the rich. If those reasons are not sound, and the county court is proper and suitable, I do not see how you can exclude the rich man, and say, "You shall spend more money on your divorce than the poor man."

15,767. That might involve the right of removal to London if the parties chose?—Why? It seems to me if the county court judge is the proper jurisdiction, why should it be removed to London? There is no reason that I can suggest.

15,768. At the present moment the High Court deals with all kinds of cases in London, although it does not deal with them through Commissioners of Assize in London. It deals with cases in the country through Commissioners of Assize. There are powers of removal?—That would only be removable from one judge exercising particular jurisdiction to another judge exercising the same jurisdiction. If the county court judge is a sound tribunal of first instance it is sound for everybody, and not only for the poor.

15,769. In some of the cases in the county court system at present they are extensive in value. Take the Admiralty work; that is removable to London, and yet it may be taken in the county court?—I do not say that may not be an improvement, but it does not alter my view.

15,770. It might meet one view, that in that way parties who could afford it could secure their London judge and their London bar without taking them down at great expense to the country?—My difficulty is to see on what ground you should remove to the High Court. Taking the view I am advocating, if the county court judge is the person who is well qualified to try these cases, you could not remove it to the High Court on the ground that you objected to the judge. You would have to put it on some other reason. You would have to give a reason why you should take that case from the local court, possibly some hardship to the respondent or co-respondent, and not allow it to be tried in the ordinary way. I am puzzled to see the

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reason. It would not be merely because he could afford it.

15,771. I think those questions exhaust the first few pages of your proof. You summarise it very clearly?—I should like to say this. If you had a double jurisdiction, and the petitioner was within the range of poverty which entitled him to go into the county court, the co-respondent or an intervener might say: "I do not want to go into the county court, I want to go to the High Court," and the answer might be: "You can go to the High Court if you give security for costs," but surely that would be a hardship. It seems to me if there are two jurisdictions you create confusion. If you take 4*l.* a week as the limit, the man with 3*l.* 10*s.* can get it cheap, and the man with 4*l.* 10*s.* cannot get his divorce at all.

15,772. Then on page 5 of your proof you say: "The court in London should, as I suggest, have power to reduce or remit court fees in proper cases, and to assign solicitor and counsel." You have dealt with that?—Yes. I look on the question of the advocates as of very great importance.

15,773. I think you have mentioned all the points in the first part of your proof?—I do not know whether your copy of my proof is paged the same as mine; but on page 5 there is a slip of my pen where I say this: "I think this would be the effect of substituting in the case of people of small means, who, as it is, I fear in many cases treat the marriage bond rather lightly, trial in the county court"—that is going further than I meant. I did not mean people of small means. I meant to refer to a class which has been referred to constantly, the very poorest. There is evidence from people who know them that they treat the marriage tie lightly.

15,774. Will you alter it to what you think?—I would prefer: "In the case of the very poorest class of the community," or something of that kind. "People of small means" is too wide, and I do not want to slander anybody.

15,775. Perhaps we had better have the paragraph on the note, and then your modification, so that we shall appreciate it. Will you state what the modification is. It is the paragraph beginning "I am of opinion that anything likely to lead people to look on divorce as readily and as easily attainable"?—The words I wish to amend are these: "I think this would be the effect of substituting in the case of people of small means, who, as it is, I fear in many cases, treat the marriage bond lightly." I should say, "In the case of the very poorest class of people," because there has been a good deal of evidence that there is a class at the bottom of the social scale who attach little importance to the marriage tie.

15,776. In the case of people of the poorest class?—Yes, that will do.

15,777. Further on in your proof you point out, even if county courts had jurisdiction, additional expense would be involved, because there might have to be increased salaries as well as increased staffs?—I think so; and there might have to be more county court judges, and even an increase of their salaries.

15,778. There would be cases there which might involve bringing people from a distance almost as great as going to London in some cases?—Yes. In this connection there was some suggestion made in the course of the inquiry that undefended cases were so simple that they might be tried without any difficulty in the county court. I think the undefended cases are the cases in which the vigilance of an experienced judge is required more than in any other. Speaking as a former King's Proctor, I think it is the undefended cases to which my attention was most drawn. Defended cases very seldom lead to intervention.

15,779. Would you remove the restriction on both judge and bar as to not asking the petitioners what they had been doing themselves?—Yes. I should have liked to see that section repealed.

15,780. That is a survival of a very old idea that the parties answering might incriminate themselves?—It is a confusion between criminal and civil proceedings.

15,781. You think that ought to be done away with?—I have always thought so.

15,782. Is there anything more you think it worth while drawing attention to on the question of courts?—No. I think the expense I have suggested ought to be incurred by the State, assuming only they maintain the limited jurisdiction as it at present exists. The justification of the expenditure by the State is that in this particular class of case they force the litigant to come to London. If that is altered, then it seems to me the case for any indulgence goes. If it is taken in the county court I do not see why they should have more indulgence than any other suitor.

15,783. If local trial is provided, any point about the expense goes by the board?—Yes.

15,784. Except so far as you deal with the general pauper cases?—Yes. The only foundation is that in this class of case you have the exceptional system of a forced trial before a Divorce Court Judge.

15,785. Now we come to another part of your proof upon which your evidence will be of value, the King's Proctor's position, assuming local jurisdiction were exercised. Will you tell us what you think about that?—I do not think there is any insuperable objection on that ground. It would involve more expense, involving an increase of agents' bills, and a possible increase of inquiry officers: I can see no reason against it from that point of view, assuming there is a shorthand note taken in every case.

15,786. May I read the paragraph which expresses it: "So long as a shorthand note was taken of the hearing and all the papers were returned immediately after the trial to the Divorce Division, I cannot say that it would materially affect his opportunities for inquiry. It might involve an increase in his staff and of his expenses for agents and inquiry officers, but this would rather be because of the number of cases (a matter of speculation only) than of the place of trial. Generally speaking, however, I do not apprehend that the proposed jurisdiction, if granted, would seriously affect the performance of the duties of the King's Proctor"?—That is my view.

15,787. May I take it that means this, the King's Proctor does not watch the trial?—Not as a rule.

15,788. Unless some special attention is drawn to it. He gets the shorthand note if he thinks fit, probably on some suggestion from the court or from other sources that the case should be inquired into?—Not quite that. The practice was started many years ago of having the papers in every undefended case examined in the office, and if anything attracted attention further inquiry was made. That was one way on which inquiries arose. Other inquiries were on information received from outside or information or communication received from the court—there are many other ways: but the papers in every undefended case were examined, and where there was anything which attracted attention the shorthand note was sent for.

15,789. That is unaffected by the place of trial?—Quite, so long as there is a shorthand note.

15,790. That meets the difficulty (which is presented by some as to the King's Proctor's office) depending partly upon the duties and partly upon the place of trial?—Yes.

15,791. You do not agree with the suggestion that the registrar of the county court should act as King's Proctor?—No. If divorce were taken in the county court he would be an officer of the court, and it seems to me impossible. I am sure Mr. Pritchard would be astonished if I asked him to act as King's Proctor.

15,792. The inquiry has to be conducted in a more delicate manner than by a well-known officer coming round?—I think the registrar would be in an impossible position, because where the petitioner or respondent was unrepresented they would go to the registrar of the court for advice and assistance about details of procedure, and it would be difficult for a man who had been in those relations to commence an inquiry to see whether they ought to get a decree or not.

15,793. The bailiffs also have been suggested?—I do not think they would be suitable.

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15,794. Will you explain why?—One reason is that the bailiff in a small place is well known to everybody and if he began making inquiries about some respectable gentleman, or apparently respectable gentleman, who had been a petitioner, everybody would know he was making those inquiries. The persons approached would be put on their guard, and would not give further information; and the mere fact of the bailiff being known to be going about making inquiries might do grave injury to a petitioner who had done no wrong.

15,795. Another point was suggested, that wherever there was local jurisdiction (I am not sure whether this was to apply to all cases, but where the parties were receiving any State assistance, as to fees or otherwise) that there should be a special officer to inquire into every case before it was allowed to come into court?—I think that is rather a difficult question. I do not know whether it would be too cumbrous to have some sort of short procedure in chambers, like the converse of Order 14, or something of that kind.

15,796. Would you suggest that in every divorce case allowed to be instituted the parties should make some application to the King's Proctor or an official for a certificate to be allowed to go on?—I think I would leave it as it is, except for the pauper cases only.

15,797. Might there be any scheme by which, instead of looking into things afterwards, some opportunity was given to a public official to inquire beforehand?—I do not think I like that. I think a public official would be put in a very difficult position. He is open to great attack, he cannot defend himself, and it is an arbitrary jurisdiction to place upon any official.

15,798. Something of that kind does take place in Scotland under the poor law system, because before they can get on the poor roll a committee has to be satisfied it is a proper case, which is an extension of our certificate of counsel, to show *prima facie* the case is a good one. Have you thought about that?—It is really a judicial function.

15,799. That would be only applicable, if it could be done in this country, to those who desire pauper assistance?—You mean the kind of case which may be dismissed as frivolous and vexatious?

15,800. Yes?—You want to guard that system?

15,801. With the Scotch system, before you can get that assistance, you must satisfy somebody you have a good case?—The certificate of counsel does not meet that.

15,802. That is based on a merely formal statement?—Yes.

15,803. You would not resist the view that some inquiry might be made?—I think it would be advantageous. My difficulty is to see what person or body would be well qualified to do it. I think the idea is valuable.

15,804. It is obvious if the State paid these fees for coming up it would say: "I am not going to do that before I think it is a proper case"?—Something of that kind would be almost necessary, I think.

15,805. Your view is that no public officer who was well known could practically get the information you get in a variety of ways?—I do not think so. My experience is that those inquiries have to be conducted with the utmost caution. You might do great harm to the character of a person unless they were conducted with careful control.

15,806. May I pass on to the next point. Separation orders you have had no experience of?—No.

15,807. Shall I leave that out?—I do not think my opinion is of much value.

(*Sir Lewis Dibdin.*) Would it not be important to have page 9 on the notes? Lord Desart explains what steps the King's Proctor actually does take with reference to inquiries.

(*Chairman.*) I thought I had covered that, but if there is anything I have omitted will you kindly state it?

(*Sir Lewis Dibdin.*) I think it would be useful to have it on the notes. It admits the King's Proctor

has found it necessary to exercise the greatest possible care in these inquiries.

15,808. (*Chairman.*) And states the kind of machinery, provided it does not put too many people on their guard to defeat the inquiry?—And to guard against injury being done to innocent people's characters.

15,809. Yes?—That is the great difficulty in those inquiries, to conduct an efficient inquiry.

15,810. May I take it shortly, you have special officers and persons you can trust, who make the inquiries in a suitable manner?—Very careful instructions are given to agents in the country, and officers in London report almost daily and take instructions.

15,811. I thought I covered all that. As to separation orders, I will leave that point on one side, as you have had no experience of them, except to ask this: suppose we were to adopt a view which has been put before us, that the magistrate's jurisdiction should be limited to orders made for temporary purposes, and that if in those cases a real permanent separation was in the end necessary, it should be left to a higher court, either some county court, or, if your view were adopted, the High Court, to make the permanent order? Have you thought how that could be practically dealt with? If you have not I will not trouble you?—I find it very difficult to give an opinion worth much about that. It is mostly derived from reading the evidence before this Commission. I should have thought you might not allow the magistrates to grant a permanent order in the first instance, but on a subsequent application, with full notice to the husband, that they might do so, but honestly I have derived my views mainly from a perusal of the evidence.

15,812. I think it would be reasonable to pass on from that point. The next one is one upon which I have no doubt you can give us assistance, as regards the publication of reports?—Personally, I see the difficulty of it very well, that proceedings before the court ought to be known to the public, and the public ought to have their opportunity of judging; but when I come to balance the advantages one against the other, I am rather more decided than my proof, and I think it is contrary to public interest that there should be publication. I am sure that is my considered view. I am not without some experience on that point. There is an instance I should like to give, only I would rather it was not put on the notes.

15,813. There is a difficulty about that. Can you mention it without names?—No, I cannot, because the name is rather the point. It does not matter; my opinion is quite clear now that on the whole it is for the public advantage that these cases should not be published.

15,814. You have instances in your mind which lead you to that conclusion?—Yes.

15,815. I think that is quite sufficient. At the end of your proof you also suggest that there are reasons against publication, as it deters witnesses coming forward and giving information. What do you say about that?—I have had a certain number of cases in which witnesses or people believed to be able to give evidence were approached by my agents or officers, and they have said, "Shall I have to appear? Will my name appear?" and the answer has necessarily been in the affirmative, and then they have said "I will not tell you anything."

15,816. That does not help you, because you cannot get the proof?—No.

15,817. With regard to amendments in the law, after your long experience have you come to any conclusion upon that point?—I have always thought in dealing with divorce as it stands, it is a great hardship on the wife to have to prove something in addition to adultery—desertion or cruelty. It has led to this evil, I think, that evidence of cruelty has been manufactured.

15,818. To supplement the adultery?—Yes, and there has been a tendency on the part of the courts to admit as evidence of cruelty that which for any other purpose might hardly be considered as cruelty. There has been a natural feeling that where a husband has committed adultery, and it may be the adultery of

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the worst kind, and continues living with some other woman—the courts have said, naturally, if there is any sort of cruelty this woman ought to have a decree.

15,819. Have you found that the view juries take; if they have the adultery proved do you think they are apt to take a very easy view of some slight act of cruelty?—That is all human nature, and excusable.

15,820. That human nature seems based on the notion it is unfair something else should have to be added to the adultery as requisite proof?—I am rather in a difficulty about it, because I think there are circumstances under which a single act of adultery should not carry so great a penalty as that of divorce. My only remedy for that is, putting the parties on an equality on that question, that the court should exercise—it has it already—a complete discretion as to whether the adultery was such as to make it necessary for them to grant the decree.

15,821. Would not that be an extremely difficult discretion to exercise, far greater than any that exists at present?—I recognise the enormous difficulty of it, but there are circumstances—I am afraid contrary to many people's opinions—which apply more to a man than a woman, that adultery may be committed under circumstances that ought not really to bring about so serious a consequence as divorce.

15,822. Do you not think that might be safely left, as in Scotland, to the discretion or option of the petitioner?—I do not know about that.

15,823. We are told by Lord Guthrie that he has not known a case in which a single act has been relied on?—I accept that fully, but I should have thought that must depend rather on the previous relations of the parties. Supposing a woman was anxious, because of the discomforts of their daily life, or differences of opinion, to get rid of her husband, she might jump at that opportunity to get a divorce. I do not question it is so, but I should have thought it was doubtful.

15,824. You add you think in some cases there might be an act of such a deliberate character as to place it in a different category?—I can see no reason why a woman should not get a divorce from her husband for a single act of adultery as much as her husband, where the husband's adultery was the result of careful planning and appointment with some particular woman, and he meets her and commits adultery. I can see no reason why that should not be as much a ground for divorce as a single act of adultery on the part of the woman, but there may be other circumstances, apart from public opinion. A man is exposed to more temptation than a woman, into which he may accidentally fall, and the consequences ought not to be so serious as divorce.

15,825. Do not these difficulties rather lead to it being extremely difficult to draw a statutory line except by simple equality?—I think the difficulty is great. My only suggestion is that the court should exercise complete discretion on the point. Do not think I do not appreciate the difficulties, for I do fully.

15,826. With regard to lunacy as a ground, that is the next point in your proof?—Quite as a general proposition I do not think lunacy ought to be a ground of divorce, but from the practical point of view of seeing that there are now and then, very rarely, such forms and such cases of lunacy as might in the particular case really render it not only a hardship but really rather a public evil, I do not see why there should not be an opportunity of divorce, but the difficulty I feel is how to say what those cases are.

15,827. You make some suggestion about it in your proof?—I suggest that homicidal or suicidal mania, if likely to be permanent, that is applied, ought to be a ground for divorce, because that makes it impossible for the other spouse to, not enjoy married life, but to do any of the duties of married life. If a man is homicidal his wife and family cannot be allowed to have access to or live with him. If he is suicidal he has to be confined for his own protection, and if that condition of things were shown by medical evidence to be permanent I find it difficult to think that the right of divorce should be denied.

15,828. I gather from your proof you do not feel disposed to go beyond that?—I do not, because I

think there is some analogy between illness and lunacy. In married life you enter into a contract ostensibly for life, and the calamities and misfortunes of life ought not, except in the very rare cases, to vary that contract and the duties each owes to the other.

15,829. Is not that all on the assumption that the life is capable of being continued together?—I think I rather put that in saying there were forms of lunacy in which the husband or wife, as the case may be, might give comfort, and perform duties and attend to the lunatic spouse.

15,830. I think we quite see your point. I should now like to have your views on the question of conviction in the criminal court, and sentences of long duration as a ground of divorce?—In my proof I have gone further than I perhaps should have, because my own feeling is that really conviction for crime ought not to be a ground for divorce. I am in difficulty rather, because of the Act of the year before last. When I get to indefinite detention I begin to wonder where I am, rather, as to the reunion of the people, but, as a matter of fact, you cannot say how long penal servitude will last.

15,831. I forget the terms of that Act. Does it involve an indeterminate time?—No, I have not looked at it lately, but where a person is proved to be an habitual criminal, and tried on a separate indictment on that charge, in addition to punishment for the particular crime the judge can order him to be detained under that Act. He is then detained, after he has served the sentence for the particular offence, not under very stringent conditions, but kept in detention until the Home Secretary chooses to release him.

15,832. Even that may come to an end?—It probably does come to an end.

(Mr. Brierley.) Is it not "Not exceeding 10 years"?

(Chairman.) That is why I ask.

15,833. (Lord Guthrie.) That was the modification?—When it came before me originally it was not there.

15,834. (Chairman.) In that case you adhere to the same view; you would not interfere as a ground for divorce?—I think not. I feel rather strongly about that, because I think it is a very cruel thing that a man should have to suffer that which is not a punishment for his offence. It is added as a separate consequence without very much consideration. The judge who sentences him may not be thinking of divorce, and you add something to the sentence. If a judge did think of it, I think it would affect his mind.

15,835. Would you think it desirable to draw any distinction between cases that were unconnected with any marital matter, and those—we have had statistics placed before us—which are more or less of a sexual order?—I think I would; but the grounds would be quite different. What you would divorce a man for would be because he committed a sexual offence.

15,836. Some of those offences might not amount to what constituted a ground for divorce?—You would have to lead up to that. You ought to enable divorce to be granted (it is limited to bigamy and sodomy) if that is the policy, for attempts under the Criminal Law Amendment Act.

15,837. A sentence of that character is in a different category?—Yes; the cause of divorce would be a different one. I do not think the mere fact a man is sentenced for a term of penal servitude ought to entitle the other party to get a divorce.

15,838. Although a different view may be taken if the cases were of a sexual order?—Yes.

15,839. There are some very interesting points in your proof on this. Is there anything else you wish directly to mention as to the reasons why it is not desirable to introduce this as a cause?—It was put rather strongly by the Lord Chief Justice about a man's affection for his wife and children. In those cases it is likely the wife and children may have the same affection for him. The case I am afraid of is where the man is devoted to his children but not the wife to him, and will take advantage of conviction to break up the home and prevent him returning to his

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children: That might very well occur. That is something of a real danger, I think.

15,840. You also point out that some frauds might be committed for the sake of wife and children, possibly with her knowledge?—Yes.

15,841. There is a great variety in sentences because of the different judges they come before?—Yes; there is an element of chance.

15,842. The length of sentences is a matter of considerable uncertainty, and they may be reviewed by the Home Office and reduced, and there is also the serious question of a possible miscarriage of justice. I take it that is a very rare case?—They do happen.

15,843. That means where a man turns out not to be guilty?—Yes. They do happen, and the worst is that in some cases I have known—I have known of most of those classes of cases during the last 25 years—it has not been discovered till months or years after the conviction. I have known years after the conviction circumstances have come to light which have in my view and that of the Home Office demonstrated the innocence of the accused.

15,844. You say "The theory that imprisonment and penal servitude are to be regarded merely as punitive has given way to the more humane principle that they should afford every possible opportunity of reform and of the restoration of the prisoner at the conclusion of his sentence to society as a good citizen." Is that the reason why you should not attach this particular penalty to the crime? Is that your view?—Yes.

15,845. You have ended this by saying: "On the whole, therefore, my opinion is against the admissibility of divorce on this ground, but if safeguarded as I have suggested above it might possibly work no substantial injustice." Does that mean in relation to homicidal cases?—I think I meant to limit it to long sentences of 20 years or more, and that it should not be the right of the wife or husband, the innocent person, but be very carefully tested by the judge who tries the case and should not be granted except on full consideration by the judge.

15,846. And only in very long sentences?—Yes.

15,847. Fifteen or sixteen years?—I would rather not say that at all, but that is the furthest I would go.

15,848. And by the judge who tried the original case?—Yes.

15,849. He might give a certificate at the time that it was a case of a character to justify a divorce?—Yes.

15,850. With regard to the question of desertion, which is your next point, will you give us your views about that?—I think that where for a very long period (I will take the case of a man, it is more convenient) a man deserts his wife, it is difficult to contest the proposition it is right she should be able to obtain a permanent separation by way of divorce, because there can be no more complete abandonment of all the duties of the husband than to go away altogether and give no support. On the other hand, as a matter of feeling, I object rather to any divorce except for the grounds that already exist for divorce, and I cannot help thinking there is great danger hidden in this proposal. It might not operate in the case of the poor; I do not think it would much. It seems to me it would lead among better-to-do people to divorce by mutual consent. Whatever period you take—four years is the outside period that has been suggested—if two people wanted to be separated, and one of them or both wanted to marry somebody else, three or four years, if they were comparatively young, is not long to wait; one has only to go away, the husband could go away and not support the wife, and there comes the right to divorce as a matter of course, they being people who under no circumstances would commit adultery. You provide a way you could not detect or deal with as collusion. They would be able to get a divorce by mutual consent.

15,851. Apparently they find no difficulty about satisfying themselves as to the maliciousness of desertion in Scotland. If satisfactorily guarded against would it not meet the case?—If people are well-to-do I do not know how you can tell, and if each

is sufficiently well off it is easy for the husband to go away and travel round the world and not communicate with his wife. I do not see how you would detect collusion.

15,852. Would it be desirable to attempt to in such cases?—From my point of view, yes. I object to divorce by agreement, which that would come to.

15,853. With the poor people you do not feel the same difficulty?—No.

15,854. We have had it suggested one goes to another country and is not heard of. It seems, as you have said, hard that the one left behind should have no remedy, and in some cases very little means of livelihood or re-marriage?—I think the logic against me is very strong; I cannot contest it; it is a matter of feeling on that point and the danger of collusion among well-to-do people. There are cases in which a man practically deserts his wife and she continues to hope he will come back; he goes to America, fails to get work, does not see his way to come back, and gets ashamed to come back or communicate. I do not think you have any right to assume adultery. If divorce is to be granted for this it must be for desertion only. I object to the idea you are to presume adultery because a man has gone away.

15,855. That would be a way of getting round it?—It is unjustifiable. Take four persons: if A, B, and C have committed adultery, there is no presumption that D has. I should object to it strongly if I were D.

15,856. The next point is with regard to judicial separation. Will you tell us your views about that?—I do not like judicial separation.

15,857. Why?—Because I think it produces an artificial and a very dangerous condition of things between people, if young, and as an adviser I should advise against it if consulted.

15,858. Do you think whenever a court is justified in interfering to separate people it should have the power of divorce?—No, you ought not to deprive certain people of the right to judicial separation if they prefer it.

15,859. Supposing the other side, says "I prefer to be divorced"?—I would not give the guilty person the right.

15,860. If it tends to immorality, would not that be an advantage to check that?—On the contrary, I think it would be immoral to give the guilty person the right to force on the innocent person a remedy he or she might not only not desire but repudiate in the strongest terms.

15,861. Is not that looking at it from the point of view of the two parties, without considering the result may be to produce immorality?—I am not prepared to take it as a matter of course it would produce immorality: I think it would produce a danger of it. I have known cases of judicial separation where the petitioner did not wish for divorce, or there were not sufficient grounds for divorce in a case at the instance of the wife.

15,862. I have heard it suggested in this room, certainly in court, that a woman who has a right to a divorce against her husband will sometimes, in order to punish him, choose only to get a separation, which inflicts a greater hardship than a divorce would?—Yes.

15,863. Would you leave her to have the option which she would do, or leave the court to say which is right?—It is no greater hardship than if she took no proceedings at all. She is not bound to take proceedings for anything.

15,864. If she does not, he could come back and insist on living with her. I am speaking of where she insists that she will not live with him and takes proceedings, but at her option puts them on the one ground or on the other without giving him a voice in it. Would you let the court have a power to say that is wrong, and that there should be a power to give divorce?—You mean where, in order to obtain a judicial separation, the petitioner proves a case for divorce?

15,865. I have had a case suggested to me in court that the petitioner is really making a minor claim in

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order to make it more difficult and unpleasant for the respondent, and, having the ground for divorce, does not choose deliberately to exercise it, not for contentious motives, but for punishment. That has been said, and I want to know your view?—I have not considered it from that point of view, but speaking rather without consideration, I think I should not force the innocent party to claim a divorce if he or she did not wish to do so.

15,866. There are several Continental countries which allow that, if the respondent claims a full decree. That is your view?—Yes.

15,867. I think that exhausts practically all the material points. As to recrimination, I should like your views, especially as you have considered that point from the position of King's Proctor?—I have found a great deal of difficulty in forming an opinion, because as King's Proctor I have felt over and over again, at any rate in a considerable number of cases, that my intervention has done more harm than good. One is apt to have one's judgment affected by particular cases which appear to be cases in which the results are unsatisfactory, but, on the other hand, I have a strong feeling that in the present state of public opinion the law should not be changed. I do not think the time has come myself when the law ought to say that a guilty person is entitled to the relief of divorce, and on the whole, although I admit there is great difficulty, I have come to the conclusion that the principle that the petitioner must show clean hands before he or she can obtain a divorce, should be maintained—but I have come to that conclusion with very great difficulty and very great hesitation.

15,868. I think you have a qualification of that in your proof, that the court might exercise a wider discretion?—Yes. I recognise the enormous difficulty I am imposing on the judge to administer this jurisdiction, but I should like the judge to be able to say, "It is quite true that it has been shown by the respondent or the King's Proctor that you have committed adultery yourself, or some matrimonial offence, but looking at the circumstances as a whole notwithstanding that, I will allow the divorce to go in this particular case." I am afraid it is impossible for me to specify the sort of case in which the divorce should be granted, but I think it might be workable with the experienced judges we should have in the Divorce Court, and I confess, feeling the greatest doubt as I do of the soundness of my opinion, I should like to see some qualification by which, even where the offence was proved, the court would have power to grant the divorce, as I think it has.

15,869. You know the terms of the Act would appear to give complete discretion?—It has been limited by decisions.

15,870. The judges seem to have restricted it in the early days, and I have found myself tied by them when sitting on the bench?—The decisions have limited it so very closely.

15,871. Would you leave it to the judge to exercise his discretion in the particular circumstances of each case, having regard to the parties, their children and the State?—I should like to see that.

15,872. At present it is put in categories like watertight compartments with no general discretion. Will you explain why, in those cases in which you have said you have felt it your duty to intervene, you thought there was more harm done than good?—I mean this, cases where it was hopeless the people should come together, where both would probably continue to live in irregular unions with persons with whom they had committed adultery, and it was difficult to say which home was the most suitable for the children.

15,873. In all those cases you had to take the advice of the Attorney-General?—Yes. The material is got together, and when the King's Proctor thinks there is a case that ought to go before the court, he submits it to the Attorney-General for his sanction, the Attorney-General sanctions it, or not, and then it goes on.

15,874. All that difficulty you have felt yourself, in which you think more harm was done than good, would be met by the judge having a discretion?—Yes.

15,875. He might find people living in bad relationship with other parties, and even where there is an intervention by the King's Proctor you think his discretion should be exercised and a divorce granted?—I think so.

15,876. (Mr. Brierley.) I understand your objection to the trial of actions in the county court applies equally to undefended cases?—I think rather more.

15,877. The existence of a bar of high traditions and standard of professional conduct is a still greater advantage in undefended cases than defended cases?—I do not want to make comparisons; I mean special qualifications and experience.

15,878. And also, one might suggest, that they have a high tradition?—As well; but the particular thing is the special qualification.

15,879. That is a still greater advantage in undefended cases?—It is more important.

15,880. Whatever experience county court judges might obtain in trying cases on their circuits, one could hardly expect, at any rate in the more rural districts, to gain the assistance of any experienced bar?—I do not see how you could.

15,881. By the number of cases?—You would not get that particular bar; you might get a local barrister.

15,882. You attach great importance to that?—Yes.

15,883. So great that that is one of your chief reasons for wishing cases to be brought up to London?—Not more than the great experience of the judges. That is also a great thing. I am not talking of questions of competence, I am speaking of experience.

15,884. (Judge Tindal Atkinson.) Do you see any good can arise from keeping people married where both of the parties are equally guilty?—That is on the question of recrimination?

15,885. Yes. Is there any reason why they should be kept to the marriage tie when they are both guilty, any more than you put an end to the marriage tie when one of them is guilty?—The only answer I can give to that is this: if you take two particular people probably it is an advantage to both of them to be separated, but I think in dealing with divorce you have to look at it from a wider standpoint, whether, if you admit the right of a guilty person to obtain a divorce, you are not attacking a broad principle of morality which is of general importance to the public regarding the institution of marriage. It is very much a question of feeling.

15,886. May it not be considered from this point of view: supposing the man has deserted his wife and is living with another woman, and the wife is living with another man, although the state of immorality must continue between those two couples under those circumstances because they have not the opportunity of re-marriage, would it not be far better there should be a dissolution of the marriage and that those two couples should live as married people rather than in a state of immorality?—I think, where the case was a suitable one, that would be met by the suggestion that the judge should be able to exercise his discretion.

15,887. Could he exercise a discretion in such a case as that?—I think so.

15,888. Would not the discretion be rather exercised in cases where the husband had only been guilty of casual adultery, or something of that kind?—I see the difficulty. I should like the judge to have the widest discretion to take all circumstances into consideration.

15,889. You would have this diversity of judgment: one judge would exercise a different discretion to the other in different cases?—That may be, but you will only have two.

15,890. With reference to insanity, does it occur to you it is just as important that there should be a ground of dissolution of marriage on the ground of intermittent insanity as permanent insanity?—I do not think so.

15,891. What about the off-spring that come from the parties coming together after one of the intermittent attacks, as regards the interests of the State? You get the children affected by the insanity. Would it not be very important that the divorce should be

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given, if it is to be given, for any case of insanity, whether it is permanent or otherwise?—I do not think so. I do not think the point of their coming together and having children—which is regrettable—alone ought to stand in their way of coming together. If, in the case of intermittent insanity, the lunatic came out, it does not follow because she did not rejoin her husband, or he did not rejoin his wife, they would not unite with somebody else and equally have children. The fact that the husband and the wife do not come together does not prevent them having children.

15,892. If you do not dissolve the marriage the lunatics can enforce cohabitation?—Yes. I should like to say I think in cases of intermittent insanity the afflicted person is entitled, in his intervals of sanity, to have his home and wife to go back to. It is a temporary misfortune, and is not such as that they should have added to it the deprivation of right and comfort of home and wife and children. That is opposed to my idea of marriage.

15,893. One question with reference to local jurisdiction. You say that the objection to the limitation of the county court or the local court jurisdiction is that there ought not to be a court open to one class, and not to another. That applies to the county court now?—Surely not.

15,894. In its general jurisdiction?—I do not agree. It is different to say: "If you have a claim for 1,000l. you must go the High Court, but if you have a claim for 50l. you must go to the county court," from saying "If you are a poor man your divorce may be granted in the county court, but because you are a rich man your divorce may be granted in the High Court," because the value of wife and home to the rich man, and the value of wife and home to the poor man is the same; there is no difference in the value of the article dealt with.

15,895. Is not the matter to be aimed at this, that you are to open the door of the courts to all classes?—If you do it at all.

15,896. At present the door of the London court is shut to a certain class of the community owing to their want of means, and if you cannot open that door you must have some tribunal to which they can resort?—Yes, but my object is to open that door to them.

15,897. I agree?—That is my policy.

15,898. Coming to that point, you can only open that door by the State stepping in and paying the cost of the parties?—Some of them.

15,899. If that fails, supposing that condition cannot be imposed, what is to be done?—The alternative, I suppose, is the county courts. The fact that that might be the only alternative could not affect my view that it is undesirable. If I may say so, I do not think the poorer classes are excluded from the courts. I cannot put this in, but I was allowed by the King's Proctor to refresh my memory from certain documents of the department, and the number of people of a very humble class who obtain divorce in the Divorce Court is remarkable. I was very surprised at it.

15,900. That would be a reason for saying no remedy is required?—I do not think so. That is my opinion, but I would seek the remedy in one way. Although it is possible another remedy may be necessary, I cannot approve of it.

15,901. It may be a question of the balance of evils, and that we have to get the less evil throughout the whole matter?—Yes.

15,902. You have had some experience of the Treasury?—Yes.

15,903. The position of things is that the Treasury have 563 county courts—I think I am right in my number—extending over the whole country, which have a staff of officers and a judge provided. Assuming divorce suitors can go into those courts and pay their fees, will not the Treasury resist having to forego all the fees of these cases, and pay the expenses of the parties coming to London, when, if they go into the local courts, they could pay the fees and all the expenses connected with the litigation?—I am afraid my experience of the Treasury is not such as to prophesy what they will do. It will entirely depend

whether the matter is taken up by the Government of the day. After all, the Treasury is the Chancellor of the Exchequer. What you mean are probably his advisers. If the Government of the day took it up, the Treasury advice which is hostile would be rejected. If the Government of the day were not anxious to take it up, they would accept it.

15,904. Is it not a strong objection to the State being put to this expense, when there are tribunals provided which would save that expense?—Not in my view, because I attach much greater importance to the retention of the jurisdiction among judges who are dealing with this matter daily—it is nothing to do with individual competence—than I do to the expenditure. I am prepared to advocate considerable expenditure in preference to altering the present system of trial.

15,905. One question with regard to the position of the King's Proctor. Supposing the poor men's cases come to London for trial in London, there would be the same necessity for the King's Proctor to act as if tried in the local court?—Yes.

15,906. He would have the same number of cases to deal with?—I do not think there is any objection to county courts from the King's Proctor's point of view.

15,907. The Lord Chief Justice expressed a very strong opinion on that point?—It is a question of expense. There would be more inquiries and trouble.

15,908. You do not agree there would be any difficulty in the King's Proctor intervening in the county court?—No, it would merely increase the expense—nothing more than that.

15,909. (*Sir Lewis Dibdin.*) You said in your answers to Lord Gorell your objection to the county court is not founded on the King's Proctor or any increased difficulty in that way?—No.

15,910. It was rather put to you as an argument for allowing divorce in cases of lunacy, the danger to the nation in allowing a person subject to intermittent lunacy to procreate children. Is not that rather connected with a very large problem of another order altogether, the problem of national health, which applies not only to divorce, but perhaps more to marriage?—I think so.

15,911. Is it really a statesman-like way of looking at the problem of divorce to drag in what is really only the fringe or a very small part of a very different although serious problem?—The strength of it is that it is a concrete case in which the evidence is brought very close.

15,912. The danger of such a person marrying at all must be, from the nature of the case, quite as great as any national danger which may occur from his relations with his wife during a lucid interval?—People now marry deliberately into families in which it is well known there is insanity. Theoretically that ought to be stopped, I suppose.

15,913. And cases of criminal instinct in the same way?—I do not know about criminal instinct. I am not impressed by that.

15,914. On any theoretical view of public health there are many grounds which would render it wiser that the marriage of certain people should not take place?—One can conceive a state in which that would be strictly regulated.

15,915. You do not regard that as a matter to be dealt with practically in England to-day or to-morrow?—I think not.

15,916. I noticed as you gave your evidence the result of it with regard to the court was really to put more and more discretion into the hands of the judge?—Yes.

15,917. With reference to this very question of lunacy your view is that in extreme cases of homicidal or suicidal lunacy the judge should have some discretion in dealing with that as a cause of divorce?—I ought to say on this point I do not think questions relating to the permanency of lunacy ought to be tried by a jury.

(*Chairman.*) I meant to have asked you about juries generally.

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15,918. (*Sir Lewis Dibdin.*) May I finish my point? That would be a question of the discretion of the judge?—Yes, on evidence, of course.

15,919. He would have to exercise his discretion?—Yes.

15,920. Also on the question of divorce by the wife as petitioner for a single act of adultery by the husband, your view is that there ought to be some discretion?—That is what I should desire.

15,921. So in cases of prolonged imprisonment?—I am against that really altogether.

15,922. But if it were allowed, your view is that it should be allowed in extreme cases at the discretion of the court?—Yes.

15,923. Also with regard to recrimination, as to allowing divorce where the petitioner has misconducted himself?—Yes.

15,924. To summarise those cases, you say one of the remedies that is necessary is to lodge greater discretion in the court. Is not that a strong reason in support of your view that the judge who deals with these cases should be a man who has great experience on the subject and long familiarity with divorce cases?—The two things are very closely connected. If jurisdiction is altered I should not recommend an increased discretion. I should like to repeat it is not a question only of the competence of the judge, but of experience.

15,925. Experience and familiarity with the particular subject?—Yes.

15,926. So far as your view as to increasing the powers of the court is concerned, that is an additional reason for keeping divorce in the hands of a specially trained judge?—Yes.

15,927. (*Lord Guthrie.*) In regard to crime at the present moment, is there any incidental penalty attaching to crime which is not mentioned in the sentence?—A man's pension may be affected by having been convicted for a felony. That occurs to me.

Yes, that is so.

15,928. (*The Archbishop of York.*) May I suggest there is another: if clergy are convicted of criminal charges, there are penalties which are not stated in the sentence?—And also in Parliamentary elections, under the Corrupt Practices Act, there are consequences.

15,929. (*Lord Guthrie.*) To have an incidental penalty would not be a new principle?—I do not think that is the same thing. In the case you have put, the sentence itself by Statute produces a certain result and is part of the punishment. The punishment imposed by the criminal judge is complete. Only by a side-wind can somebody else take a step to ruin a man.

15,930. That is shown by this, that a criminal judge would not consider, in giving the sentence, such an element as his Grace has referred to, whereas you think he would consider the question of divorce?—The judge who had it in mind would unavoidably give effect to it in imposing the sentence, but it might be the judge might not have it in his mind. I have suggested an element of chance in my proof, but that is adding the additional chance that one judge might think of it and another might not.

15,931. If the proposal which was before the House of Commons for the American system of indeterminate sentences, with no fixed period of detention, was passed, would it be possible to apply the principles of a system which involves no fixed period of detention? That would introduce difficulty in any proposal for attaching a divorce penalty to crime?—I think it would.

15,932. You said cases had been found out of innocence at a considerable period after the sentence. Adolf Beck's was a case of that kind?—Yes; I think Beck's case was actually found out some years afterwards.

15,933. He had actually served a term of imprisonment?—Yes.

15,934. In your view, to take it concretely, it would take away one of the most powerful weapons of the prison chaplain in dealing with prisoners?—I think so, and the Prisoners' Aid Society.

15,935. And similar agencies. With regard to desertion you suggested that in the case of those who are well off, where no question of subsistence came in, you might have cases of collusion. Undoubtedly that might occur; but would you have any greater risk of collusion in desertion cases than in adultery cases?—Only this: I think it would be so much easier and more difficult of detection.

15,936. It is a question of degree?—I do not see how you could detect a well-arranged plan of desertion between two people of independent means. In adultery there is a risk of finding out a sham adultery, and a great deal of evidence may be obtained, but a well-managed desertion would be incapable of detection.

15,937. (*Chairman.*) It is possible for the respondent to make out a case of adultery without it being true?—He runs a risk; there must be evidence.

15,938. There are ways?—Yes, I know. It is a question of degree, I think.

15,939. (*Lord Guthrie.*) Have you considered the case of what we deal with in Scotland as desertion, but what very often is really disappearance?—Yes.

15,940. And the wife is left not knowing whether the husband is alive or not. Have you any suggestion to deal with that case in England? It is a very hard one. She does not know whether she can marry or not?—That is rather the case I thought had been presented, where the husband had gone away and no more was heard of him. I thought that that disappearance was put to me as desertion.

15,941. One has the case of malicious desertion where by letters and conduct the man has repudiated expressly all further communication with his wife. You have the other case of simple disappearance, a sailor at sea who has not been heard of for 10 years, and the woman does not know what to do. In Scotland we treat that as malicious desertion, although it is not strictly so, and she gets her remedy and knows where she is. Could not that be met by making the Presumption of Life Act entitle a woman after 7 years or 10 years, or anything you like, to re-marry legally?—I do not like it. I am afraid of desertion altogether as a ground for divorce without adultery. You put to me rather the very thing I am afraid of in desertion, that the desertion might turn out not to be desertion.

15,942. Take 10 years. Do you think there would be collusion in that case?—Probably not.

15,943. Would it not be reasonable in that case? It would not be a divorce Statute at all, but the Presumption of Life Act could be extended to make the 7 years 10, to authorise a wife to re-marry?—That would effect no injustice: I do not like to put it higher than that.

15,944. You have referred to the position of the King's Proctor and his action in the cases of recrimination. Does he not also act in cases where no such question arises, in the cases of connivance, collusion, condonation and jurisdiction?—Conduct conducing.

15,945. And also jurisdiction?—Yes.

15,946. If you found out, for instance, when you were King's Proctor, that the plaintiff was really a domiciled Scotsman, you would intervene?—It is the duty of the King's Proctor to bring to the notice of the court that which is material to the issue he had to deal with and which has been kept back.

15,947. Even although the law in England as to recrimination were altered, the King's Proctor would still exist for that purpose?—Yes. There are cases in which I do not think any reformer would not wish that the court should act. I will take the case where a prospective petitioner takes steps to incite a prospective respondent to commit adultery. I have had several of those cases. Nobody would say that is a case in which the petitioner should get a divorce.

15,948. It is the fact the main work of the King's Proctor arises in connection with recrimination?—I would not like to say that; it is very common; there is a good deal of conduct conducing. We have some cases of collusion, some of connivance. Probably adultery is the larger proportion, much the larger proportion. The other looms larger with me, because the adultery is very rarely fought.

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15,949. You said you thought the principle was sound that a man should come into court with clean hands. In the cases you have mentioned if the petitioner had ground for divorce he would come into court with clean hands, in the sense of there being no collusion. Why, in regard to a separate offence, should that involve a question of clean hands?—I think it is on broad principles of morality, and the character of the relief which the English law affords. There may be cases where the adultery of the husband has conducted to the adultery of the wife; if the husband had been faithful to her she would not have gone wrong. It may come closer to the facts of a particular case as conduct conducing.

15,950. Although short of connivance or collusion?—Yes.

15,951. Is there any analogy in any other part of the law to the right of a third party to raise an objection in the public interest to a plaintiff getting his remedy for an admitted wrong?—I do not think that there is.

15,952. I suppose not?—I do not know that there is; but, of course, the circumstances under which the King's Proctor was retained is a matter of Parliamentary history, but the Act goes further than that, because any private person may intervene, not only the King's Proctor.

15,953. The principle is admitted by everybody, because in the case of condonation everybody admits a third party is well entitled to raise that, so that the principle of a third party coming in does not arise merely in recrimination?—No.

15,954. It arises in condonation, collusion, and so on?—I think it is all part of the view which has been taken in England, that divorce is treated on a different footing to other proceedings.

(*Sir Lewis Diddin.*) That is a matter I have had some experience of. It is always open to a third party to bring prohibition proceedings, certainly in the Ecclesiastical Court, and probably other courts.

(*Lord Guthrie.*) What do you mean precisely?

(*Sir Lewis Diddin.*) Any party not a party to the proceeding may apply for prohibition, in the case of the Ecclesiastical Court dealing with a matter outside its jurisdiction. He is generally stopped, unless he can prove that he has an interest in the matter, but he has a technical right to come.

15,955. (*Lord Guthrie.*) In the course of Sir George Lewis's examination the matter was referred to. What is your view on the question of juries generally, in connection with matrimonial disputes?—As far as my experience goes, I prefer to see the cases tried by a judge. That has been my opinion for a good many years; but I confess when I read the evidence of Mr. Barnard and Mr. Priestley, and what they said about the members of the bar who practised in that court, who have more experience than I have, it impressed me, but I could not change my view. I would rather have a divorce case tried by a judge, on the principle that if I had a good case I should like to go before a judge, and if I had a bad case I would prefer to go before a jury.

(*Chairman.*) I do not know that they differ from that.

15,956. (*Lord Guthrie.*) There are also incidental difficulties. The proceedings are longer and more costly and less seemly?—They are fairly seemly, I think, but I agree.

15,957. Do you not think that questions are put to witnesses in the presence of a jury that would not be put if the judge were sitting alone?—That is so, probably, and advocacy is of a different character before a jury than before a judge.

15,958. It has been said if juries are proper in the High Court, equally good juries would not be got in the county court. Have you any experience on that?—I could not tell you anything about that.

15,959. (*The Archbishop of York.*) With reference to the publication of proceedings, some witnesses who were here some time ago, said that they attached some value to the publication of proceedings, because that publication from day to day was, or might be, of great value to your department, that it enabled you to be

on the *qui vive* about things going on. Do you attach any value to that?—I think I can explain in a word why as a rule it would not, because the class of case that gets reported is nearly always a hard-fought and *bona fide* fought case. In those cases the King's Proctor rarely intervenes. All the material is before the judge. It is rarely those cases affect the King's Proctor.

15,960. With regard to recrimination, would it be your view that this principle of the law should be kept up on the ground of public morals?—Yes, I have a strong feeling in that direction.

15,961. (*Mr. Burt.*) I want to ask you a few questions on one or two points. I understand, while you are opposed to giving jurisdiction to county courts, local courts, in divorce cases, you have no objection to having some preliminary inquiries made by such courts?—No.

15,962. That, I suppose, to some extent would diminish the expenditure?—I think it ought to diminish it very considerably, and add immensely to the convenience of the person living in the country; it would lessen their trouble and expense.

15,963. It might enable some witnesses to be dispensed with, or at any rate the necessity of their coming to London?—Yes. It would limit expense in this sense: it would prevent your having to employ an agent and solicitor in London, or at all. You could do the whole work yourself in the county court, probably.

15,964. I understand that you recognise the difficulty of poorer people availing themselves of the divorce proceeding, and you have made certain suggestions in the way of diminishing the expenses and affording facilities?—My object is to bring the people to the Divorce Court in London in preference to bringing the court down to the people in the country.

15,965. I do not know whether I understood you with regard to equality between the sexes, the difference between the adulterous husband and the adulterous wife?—I think what I said was that the act of adultery without cruelty by the man, might entitle the woman to a divorce, but the judge should have a discretionary power as to whether the circumstances of that adultery such as a single act under certain circumstances, was such as to justify him refusing the divorce. It is equality purely, subject to discretion.

15,966. With regard to lunacy, you further spoke against allowing lunacy, however prolonged and however incurable, to be a sufficient justification for claiming divorce?—I do not think I said that.

15,967. You did not put it as strongly as that?—I said certain classes of lunacy which, if permanent, would justify divorce.

15,968. In your proof you institute a comparison between lunacy and ordinary illness. You say, no doubt correctly enough, that lunacy is an illness, but is there not this distinction between lunacy and ordinary illness, that in the case of ordinary illness separation is not necessarily involved between husband and wife, but in the case of lunacy the lunatic is in a lunatic asylum?—Not invariably.

15,969. Not invariably, but as a rule, in the case of the poorer class of people?—Yes, but there are cases in which the lunatic, a harmless lunatic, lived at home and had the care of husband and children and had not been in an asylum at all. It is a question of degree, I think, and possibilities. It is analogous to illness in some cases.

15,970. I am rather glad to say I misunderstood you, and that you did not put it so extremely high. With regard to desertion, I understood you to say in the case of desertion, however prolonged that desertion may be, you would not consider it a justification for a divorce?—I did not go so far as that. I spoke with anxiety in admitting separation at all, and I think I said no injustice would be done in the case of divorce after 10 years of desertion.

15,971. If the matter is qualified I am satisfied, but I thought you put it—perhaps not in the language I used—that desertion should not be a justification?—I do not think I said that. I put it that I did not like the idea of desertion without adultery being a ground for divorce, but I could not but admit the desertion of

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a certain length would afford ground for it and would not work an injustice.

15,972. You would leave that to the discretion of the judge?—In that case.

15,973. (*Sir William Anson.*) Desertion under certain circumstances would have to be regarded with some suspicion as possibly collusive?—Yes. I think it would require very strict proof it was malicious desertion.

15,974. It is the case that resistance to a decree for restitution of conjugal rights is equivalent to desertion; if a decree for restitution of conjugal rights is made and the husband resists it, that is construed as equivalent to desertion?—Yes. You mean if the order is disobeyed?

15,975. Yes?—Yes.

15,976. So that coupled with adultery that would be a ground for divorce now for the wife?—Yes.

15,977. That suggests the possibility of collusion?—Yes, and I have no doubt it occurs.

15,978. As regards lunacy, it must be hopeless lunacy?—I should limit it very much indeed to extreme cases, and cases which I think in fact would be rare. As long as there is a reasonable and fair chance of recovery it is a very cruel thing to allow divorce.

15,979. In the case of intermittent lunacy which was likely to be recurring, you would not allow it?—No.

15,980. You base that on the ground of the separation of the married couple, and on the ground of injury to the spouse of the afflicted person?—Yes.

15,981. You think the work of the King's Proctor would not be affected by the jurisdiction being transferred, or some of it transferred, to the county court?—Probably it would be rather more troublesome and expensive and there would be an increase in the work.

15,982. It would be as effectual?—Yes.

15,983. The real objection to county courts is the lack of experience on the part of the judge, and not having the assistance of the bar?—Yes. I would rather put it in an affirmative way, I want divorce to be dealt with by two judges doing that work and highly experienced in that work, and specially qualified to perform it.

15,984. You would go rather to the expense of bringing the suitor here at the expense of the State than sending the judge there?—Than sending the jurisdiction there.

15,985. Supposing the alternative was a somewhat increased staff of judges in the country, of whom one or two were constantly going circuit dealing with those cases?—I do not think that would be necessary. I suggested myself that there might be cases or a number of cases which might be collected together and a judge might go down to the country to try them, but I do not think you would want regular circuits. It is all rather speculative as to what effect any cheapening of divorce may produce; whether it will increase divorces largely or not I do not know. It will increase them to some extent, undoubtedly.

15,986. If the county court had jurisdiction, as has been suggested, is there any reason why any or every divorce case should not be tried locally?—I think if you gave the county court jurisdiction in divorce cases you could make no distinction between rich and poor.

15,987. It is difficult to draw a distinction as to means?—They should try all cases if that was done.

15,988. (*Sir George White.*) May I take it in regard to lunacy you go a little beyond your notes, in which it seems to me you confine it to cases of homicidal or suicidal mania. I will give you a case within my own knowledge in my own circle of acquaintance which will illustrate it better. A young professional man married at 25: his wife, after the first confinement, became a lunatic, not a dangerous lunatic at all. Nearly 30 years have elapsed, and she has been certified over and over again as a hopeless case of lunacy. He has no remedy whatever. There is no danger from this lunatic, but still she is kept in confinement. Is not that a case which would merit separation or divorce?—That is a very difficult case indeed to deal with. If it was quite hopeless and quite incurable and necessitated confinement in a

lunatic asylum, I am not sure I could raise any objection to a divorce in such a case. I do not think I did in my examination to-day.

15,989. I thought your notes would rather exclude a case of that sort, although I hoped your examination did not exclude it; that is why I put it. In this case of 30 years the man has been compelled to live a bachelor life, although the wife has been certified as a hopeless lunatic?—I think an extreme case might justify it, but I do not accept the principle that because you can find a number of hard cases that is a sufficient ground for creating a new principle.

15,990. It must be a fair sample of a good many cases that exist?—I said there might be extreme cases of permanent lunacy which may justify divorce. I do not think I would go beyond that.

15,991. With regard to penal servitude, one of your objections to granting divorce is the fear that wives anxious to get rid of their husbands might use this as a means of breaking the home up?—I did not put it as an objection, but as an instance of how it might work between husband and wife.

15,992. Would it be a bad thing to break up the home under those circumstances if she was a woman of that character?—In this sense: the man who went to penal servitude might be a good father and the best person to be with the children.

15,993. I am thinking of the children in the interval in the case of the woman?—They must be in the care of the woman. If she got the divorce she would equally keep the children. The children would be with her under any circumstances.

15,994. With regard to expenses: as I take it, you feel that if the Government, whatever Government it is, might see fit to alter the law they would have to deal with the question of expenses. It will not be a question of whether the Treasury would like to pay the expenses, but they would practically have to deal with them if they chose to alter the law in the way of putting things within the reach of the poorer classes, and therefore you do not remedy any difficulty about expense on that ground?—In matters of those kinds the Government would adopt the scheme or not. If they did, the Treasury objection must disappear, if they meant to carry it through.

15,995. (*Chairman.*) Are you able to tell us what proportion the cases in which you intervened on the ground of collusion alone bore to the cases in which you have intervened on the ground of misconduct on the part of the petitioner?—I could not give you it in the way you ask, but cases of collusion are very few—one or two a year. I could not tell you how many of the others.

15,996. The great cause for intervention is you find concealment on the part of the petitioner of his misconduct?—No, most of the collusion cases.

15,997. I was not on collusion. Is it the case that most of the cases are on the ground of misconduct of the petitioner which is kept back from the court?—That is the ordinary case.

15,998. Do you think that the cases of collusion between the parties are very numerous, if you have only had one or two in a year?—It is very speculative. We have a good many cases in which we suspect collusion and get no evidence, but our suspicions may be ill-founded. There is no doubt a certain proportion of cases in which collusion is suspected.

15,999. Would one or two cases suggest much collusion?—That is about it. I think it works out hardly more than two. There might be three one year and one in another.

16,000. In which collusion has taken place and you have intervened?—Yes.

16,001. What is about the total interventions per annum, roughly?—I can give it to you in a minute. It varies in the last 10 years from 11, the lowest, to 33, the highest.

16,002. The total number of interventions altogether is not very large?—No, but we inquire into an enormous number of cases; it varies from 306 to 631, but the actual interventions vary from 11 to 34 a year.

16,003. In what number of years?—Fifteen years.

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16,004. One of your main points is to get these cases taken before a judge of experience?—Yes.

16,005. I do not know whether you recollect the fact that the judge always has to acquire his experience?—Yes.

16,006. The appointment is generally made of someone who has had none?—Not always.

16,007. But generally; you know that?—Yes.

16,008. Supposing this jurisdiction were conferred upon a limited number of the most qualified county court judges, would you see any difficulty in their gaining the experience a newly-appointed judge of the High Court has to obtain?—I think if you had a few and chose your men, you might create a court different to the present Divorce Court, which would be efficient. That is not the same thing as giving jurisdiction to the county courts.

16,009. I agree that may be a totally different thing; selected men with qualities sufficient to satisfy your standard ought to have no difficulty in dealing with the experience?—Not if they did that work, the greater part of their work, continuously, so to speak. That meets my requirements.

16,010. Or sufficiently proficient to make it a real part of their business?—I think at the same time, even if that was done, I should like to place them (there is a great deal in imagination) in a position which would

make them in status or position equivalent to judges of the High Court. It may not be reasonable, but there is a feeling about that.

16,011. Would not that enable the cases to be tried by men of that standing in the districts which are more accessible?—Surely if you only had two or three, or four, five or six, the distance the suitors would have to travel would still be great.

16,012. That would meet the difficulty of the great centres of population, that limited number of judges?—Yes, you could do it in the large centres. I should have hardly thought, either as a matter of expense or relief, it would have been very much more advantageous than the system of giving State aid to enable witnesses to come here.

16,013. You have a population close to Liverpool and Manchester of more than a million people in those towns, probably two million people within easy access. Supposing you had a judge, as I suggest, to deal with that district, you would save all the expense of coming to London?—You would create a divorce court, for those centres, in practice.

16,014. Would that meet your difficulty?—I think it would, to that extent.

(Chairman.) I ought to say we feel very much indebted to you for coming here and giving your evidence, and for the thought you have bestowed on your proof. It has been of great assistance to us.

Mr. Justice DENNISTON called and examined.

16,015. (Chairman.) Are you a member of the High Court Bench of New Zealand?—I am a member of the Supreme Court of New Zealand.

16,016. Has it fallen to your department to take a great number of divorce cases in that Colony?—There is no separate divorce court. All the judges in the Colony are judges in divorce. I have been 21 years on the bench now.

16,017. During that time you have taken a large number of cases?—That is so.

16,018. Your divorce system and procedure were established by the Divorce and Matrimonial Causes Act of 1867, which was the first New Zealand Statute on the subject?—Yes.

16,019. At that time it was practically the same as in England?—Yes.

16,020. The Divorce and Matrimonial Causes Act of 1898 for the Colony, which was assented to in April 1899, introduced several alterations?—Yes.

16,021. Were those mainly in the direction of adding to and enlarging the grounds upon which a decree for the dissolution of marriage might be granted?—They were.

16,022. I think the amendments are these: Adultery alone on the part of the husband is a ground for divorce at the suit of wife; wilful and continuous desertion by husband or wife for a period of five years without cause is a ground for divorce at the suit of the deserted party; the fact that a husband has during four years and upwards been an habitual drunkard, and has either habitually left his wife without means of support or has habitually been guilty of cruelty towards her; and the fact that a wife has for a like period been an habitual drunkard, and has habitually neglected her domestic duties and rendered herself unfit to discharge them, is a ground for divorce at the suit of the husband or wife of the offending party; the conviction and sentence to imprisonment or penal servitude for seven years or upwards for attempting to take the life of husband or wife is a ground for divorce at the suit of such husband or wife?—Yes.

16,023. It is only in the event of the sentence being for that one particular crime?—That was so. That Act was passed to meet a case which was a very exceptional case, where a husband was convicted and sentenced for life for having attempted to murder his wife.

16,024. It was no longer safe for her to live with him?—That is so, obviously.

16,025. Then by an amending Act passed in 1907, which was assented to in 1908, these grounds were

added; that the respondent had been convicted of the murder of a child of the petitioner or respondent, and of course, sentenced for a term of imprisonment for it?—Those are the actual words of the Statute, but of course, they imply being sentenced.

16,026. The next ground is that the respondent is a lunatic or person of unsound mind, and has been confined as such in any asylum for a period or periods not less in the aggregate than ten years within twelve years immediately preceding the filing of the petition, and is unlikely to recover from such lunacy or unsoundness of mind. Therefore, it seems from this that the court of which you have been a member since 1889 has for the last 10 years been administering a system of divorce procedure which includes a number of provisions, the question of introducing which into the divorce law of England has been brought to our attention?—Yes, that is so.

16,027. It was suggested to us that you might give us the benefit of your experience in dealing with such provisions in your own Colony?—That is so.

16,028. Will you give us your views very shortly upon the two points from which you approach this question?—I wish on that point to make what seems an obvious preliminary observation, that there are two points of view in which to approach the question of divorce generally. There is the position of those who look exclusively on matrimony as a sacrament to be dissolved only at the instance of the husband, and only on one divinely permitted ground; and there are those who consider that, for the purpose of its public and legal recognition and control, it should be considered and dealt with on the basis of a contract with mutual obligations on the contracting parties. I do not presume, nor do I think it necessary, to offer any opinion on these conflicting views. English law, by constituting or allowing the status of matrimony by a purely civil process without any religious sanction, and by permitting divorce at the suit of a wife for certain matrimonial offences, seems to me to have adopted the contractual view. The Colonial Legislature certainly has done so, and it is on that basis that I think any proposals for the alteration of the law should be considered. The question of the repeal of the law is not one to consider in any shape.

16,029. Before you deal with the first question, were the amending statutes in New Zealand passed after any difficulty or controversy?—I am not familiar with that. I think they represented the public opinion of the country. I presume there was a discussion, but as far as my memory serves me there was no great discussion.

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16,030. There was no special contest arising in regard to it?—No.

16,031. Do you recollect whether any ecclesiastical difficulties arose in opposition to that in New Zealand?—Not that I can recall.

16,032. Dealing from that point of view with the first question, namely, the placing of husband and wife on an equality as to the legal consequences of adultery, will you give us your view?—I think it lies on those who advocate discrimination between the rights of the respective parties to the contract, to show that such discrimination is required in the public interest. I recognise fully that on physiological grounds, and because of the possible effect in many cases on family rights, the adultery of a wife is of a more serious nature than the adultery of a husband. It does not, however, seem to me that this consideration should affect the right of the wife to the same relief as the husband. At present the adultery of the husband entitles the wife to a judicial separation. The justification for this, and for judicial separation generally, is that the act of the offending party has made it unreasonable to compel the other party to carry out the terms of his or her contract. That, I think, was first stated by Lord Thurlow in a celebrated case in which for the first time incestuous adultery was admitted as a ground of divorce at the suit of a wife in an Act of Parliament. He held that incestuous adultery was of such a character as to make it impossible for a wife decently to return to cohabitation. That was the ground upon which incestuous adultery was treated as being a ground for divorce at the suit of the wife, that it was impossible for the wife to return to cohabitation. I cannot, on the contractual view of matrimony, see any reason why the grounds on which a decree of divorce *a mensa et toro*, which puts an end to the purposes and objects of matrimony, should not equally justify a divorce *a vinculo*. I look upon this question of judicial separation as practically one of these half-way houses of compromise, and introduced as a means of getting rid of difficulties which existed at the time in order to give full effect to it. It seems to me that it has no logical justification. Everyone recognises the hardship inflicted upon innocent persons unmarried in effect, but left encumbered with a formal status which is only onerous and disabling.

16,033. Have you found any trace of, such a system in any system of law except that which has originated from the ecclesiastical view?—Not at all. It seems to me the basis of the whole thing is that matrimony, from the point of view of the State, simply establishes a status carrying with it certain obligations which is made indissoluble by the consent of the parties. It establishes that status, and if it has acted upon the assumption that it can be dissolved in consequence of acts or conduct on the part of one of the parties, which destroyed the object and purpose of matrimony, that makes, it seems to me, the status of a judicial separation illogical.

16,034. How have you found the law work out in your Colony? You have said that it was in accordance with public opinion?—Yes, as far as I can recall.

16,035. How have you found the law work out since the change?—I have never heard of any objection raised to it. I think it has met with universal assent except from those conscientious persons who hold that no human law can interfere with the, what they consider, divine law on the subject. They, of course, dissent, and that is the view taken by the large Catholic community.

16,036. You go on to say in your proof that the alteration would undoubtedly, to some extent, encourage and facilitate collusive divorces?—That difficulty is to be met with.

16,037. Have you found that in practice?—I know I have found the fact of the adultery of the husband being now sufficient has led to collusive evidence of the adultery, that is to say there may be actual adultery on the part of the husband, but in order to facilitate the proof there has been opportunity given deliberately to find out and convict the parties.

16,038. That is different from the collusion which produces the act?—Yes. I am not prepared to say

that I have come across cases clearly evidencing actual collusive adultery.

16,039. Let us get that clear. You mean that there has been adultery wrongly committed?—Yes.

16,040. And then that the guilty party has furnished the proof of it?—Yes. I have found several cases of that. There was one very strong case of that in which the evidence was so disgraceful as to lead me to severely censure the solicitor responsible for it. Sometimes evidence of this kind is offered: a man may go into a house of ill-fame without committing adultery, but he puts himself in a position for evidence to be given of it. Very few men would admit, directly or tacitly, the cruelty or other misconduct now in England necessary to entitle the wife to full relief, and any collusive evidence of such would necessarily be perjured. I am speaking from experience, and I think that the difficulty can be, to some extent, met by careful scrutiny of the evidence. I do not think the mere risk of collusion is sufficient to justify depriving the wife of the right.

16,041. Have you found any reason since the change in the law in New Zealand to suggest that you had better go back to the old system?—Certainly not. I do not think that there is anything to justify evidence of collusion in committing the offence, although a husband in the present comparatively lenient view, in many cases of adultery on the part of the husband, is much more ready to afford evidence or commit the offence, but I cannot speak from actual experience.

16,042. Then you proceed to deal with the question of wilful, continuous, and unjustified desertion?—Yes. The observations I have made on the equality of husband and wife as to grounds for divorce, apply equally to the question of the treating wilful, continuous, and unjustified desertion for a period of years as a ground for divorce. The greater number of applications for divorce which have come before me have been on this ground. As to the local reasons for this I may say that a substantial portion of the inhabitants of the Australian colonies, as diggers, shearers, and such like, have acquired a somewhat nomadic character, and made little of shifting or abandoning their homes at short notice for trifling causes. This encourages desertion. Another reason exists in New Zealand, in the fact that the "age of consent" has been raised to 16 years. A girl whose age is a few days under 16, and who is in very many cases the seducer, may lay a criminal charge against a lad of a few days older. Such a power is not only a great inducement to blackmailing, but is largely used to compel marriage between the parties. Such compulsory and ill-assorted marriages are a fruitful source of desertions. I have found on comparing the date of marriage with the date of the birth of the eldest child that a very large proportion of suits for desertion arises out of such marriages. In very few have I found any ground for suspecting collusion. I am not alone in that. One of my brother judges who concurs with that view, and is very much struck by the very large proportion of these desertions which occur from that wretched suggestion, "marry the girl," has collected some statistics on the point, but I have no actual data.

16,043. What does your experience lead you to suggest as a remedy?—I cannot suggest anything except a better tone of morality. I mention that as the basis of a very large number of desertions. It is my opinion, fortified by experience, that the hardships which the deliberate abandonment of the duties and obligations of the marriage tie involve, should supply the strongest ground for its absolute dissolution. In almost all such cases a judicial separation is both unnecessary and valueless. I might point out that while the period in New Zealand is five years, in New South Wales it is only three years.

16,044. It amounts to this, that where there has been intercourse they marry for the moment, and afterwards the husband deserts?—He does not always desert at once. He has no means to support the girl; he is compelled to marry to save the girl's name and he marries her, and goes in many cases to the home of the father or mother, and the life is invariably unhappy. It is the basis of a loveless and sordid and invariably

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unhappy marriage, and the man takes the first excuse for leaving her.

16,045. In such cases you think that a separation is valueless?—Yes.

16,046. Your remedy would be divorce?—Yes; I think if the State claims the right to dissolve the status of matrimony which is established, if one of the parties has been guilty of something which destroys any reasonable ground for compelling the other party to carry out the matrimonial contract, that the other party should have the choice of absolute dissolution.

16,047. Do you think that would tend in the direction of morality afterwards or not?—That is the principal basis of the whole matter. The present law in England places an innocent party in a most improper position. She is a wife, but she is no wife. She is a wife in name. I should put desertion as a stronger ground than adultery, because the wife can condone adultery but she has no power of condoning desertion.

16,048. Your experience does not lead you to think that those cases would lead to such collusion that it ought to be dropped?—No, I think that it would take a very strong case of injury to the public by collusion to entitle the legislature to deprive the wife of what, from my point of view, is her right as a term of the contractual obligations entered into, that is a right to have it dissolved when one party has made it impossible that it can be carried out.

16,049. The third ground you mention is habitual drunkenness for four years by husband or wife?—Before leaving this question of desertion, I should like to refer to something which has been said as to people disappearing and going away for five years. The original desertion must have been intentional, or there must be some time when it becomes intentional. That makes impossible collusive evidence in the case of people of wealth. The husband must have left under circumstances, which not only prove the going away, but the intention to desert.

16,050. That looks as if you want to be satisfied that you have independent evidence to show that was part of the collusive arrangement?—That is true. I have never allowed the evidence of the wife herself, but I have required corroborative evidence as a matter of course. I think there is very little collusion in the question of desertion.

16,051. The third ground is habitual drunkenness for four years by husband and wife. What do you wish to say with regard to that?—Habitual drunkenness for four years by husband and wife, with, in the case of the husband, habitual failure to support, and in the case of the wife, consequent neglect to discharge household duties—has not, in my experience, been largely availed of. There must be the two combined. Habitual drunkenness, and neglect and failure for so long a period, are facts not easy to prove. That has not been availed of; it is difficult to prove habitual drunkenness for a term of four years, but I have had cases in which it has been established. There may be considerations, such as the possibility of cure or reform, which might be held to make permanent separation, against the will of the offending party, too strong a remedy. The condition, however, of a family one of the heads of which has been for years an habitual drunkard, and thereby rendered himself or herself unfit to discharge the duties respectively undertaken, appears to me so painful, and so demoralising to children, as to justify the extreme relief. All the cases under this head which have come before me in which relief has been granted, have disclosed great unhappiness and hardship. In cases where the husband is the petitioner, he is generally ordered to make some provision for the wife.

16,052. You have not had many cases of that character, because, you say, it is difficult to prove, but where it has been proved you have found it desirable that there should be a divorce?—Yes, that is my opinion. It is worse than desertion, because there is a continual sore.

16,053. You have had no case under the fourth ground, that of conviction for attempted murder?—No.

16,054. You say that provision was passed in consequence of some case?—Yes. A special case which was felt to be a very hard one; not only had the man been convicted of attempting to murder his wife, but when his father-in-law was exhumed he was convicted of murdering his father-in-law, and sentenced to death, but upon a question of admission of evidence he got free, at least he was not hanged.

16,055. Have you found these additions to the original grounds of divorce have caused a large number of cases to arise?—I have not yet referred to the question of insanity.

16,056. I think I read it out in the course of the amendment?—Yes, but I do not think I referred to it. I should like to say the distinction between that and desertion, is that in the case of insanity there is no misconduct on the part of either party, but it seems to me it has the same result. Permanent insanity has the effect of making the marital relations impossible.

16,057. It breaks up the home?—Yes. I do not know whether it is relevant, but I should like to refer to something that was said about delusional insanity. Delusional insanity is much the most dangerous possible form. It is well-known that delusional insanity almost always indicates some brain lesion, and it may and very often does take a homicidal form. I should like to give one instance in my own experience of that if I am not detaining you. It is part of the duty of a judge in New Zealand to decide in some cases as to the release of a person confined as a lunatic, and I am constantly applied to by women, whose breadwinner is locked up, petitioning to have him released, and I always tell them this experience. I tried a man for murder on circuit. He had been confined for delusional insanity, delusions unconnected with anything homicidal, ordinary delusions such as seeing electricity coming out from the trees, and trifling things of that sort, and his wife went over and with great difficulty persuaded the head of the asylum to release him. They went home together quite friendly, and he walked up to the wood block and clove his wife's head in two. When I have told them that they are not so anxious for the release of the breadwinner.

16,058. You find that the additional grounds for divorce have been to increase the number from 46 in 1898 to 147 in 1907?—Yes.

16,059. But has your population increased as well?—Not in anything like that proportion. I give the date in order to show the proportionate increase to the population. The population has not increased to any great extent in the interval. I would point out that when you remove from the category judicial separation, and elevate those cases into cases of divorce, you necessarily increase the list of divorces.

16,060. Have you the figures of judicial separations?—I fear not. I have not had the material. Except on the ground of desertion, which is a new ground, I do not think that there has been any material difference. When you add to the grounds of divorce you add to the number of divorces, but not to any unreasonable extent.

16,061. I am not sure whether that is sound. We are going to have evidence to show that is not so?—Perhaps not, but we have not so large an experience.

16,062. Then there is a provision in the New Zealand Act to which you refer, section 3, which is as follows: "A deserted wife who was domiciled in New Zealand at the time of desertion shall be deemed for the purposes of this Act to have retained her New Zealand domicile, notwithstanding that her husband may have since the desertion acquired any foreign domicile." That is to get over the difficulty of domicile to pursue the husband?—You have to pursue the husband to get to his domicile.

16,063. We have got over that in England without any difficulty?—Latterly the decisions seem to me to have been in favour of that. Has there been any legislation about it?

16,064. No. Where a party is domiciled in England, and the husband deserts, she is allowed to say the domicile is in England?—That is the judicial decision?

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[Continued.]

16,065. Yes?—I have not had an opportunity of seeing it.

16,066. Your Statute does what we have done in another way, and which we ought to make plain?—We have legislated in New Zealand on the point in order to make it plain. I have pointed out in regard to desertion that in the great majority of cases, at least among the poorer classes, desertion is with the object of escaping the burden of wife and family, and is accompanied with concealment. In very many cases bringing the petition to the notice of the respondents either by personal or substituted service is impossible. Therefore if the domicile of the wife had to change with the wandering husband the thing would be illusory.

16,067. You dispense with service in New Zealand?—In special cases.

16,068. Will you continue with your proof, it is all on the same point?—Yes. If the wife's domicile is held to follow the husband's, then in any case in which the husband has acquired a fresh domicile, it may at least be a question whether, in the absence of special provision, the court of the country where the wife is domiciled has jurisdiction. That has been disposed of in England, as your Lordship says, and does not apply. I have even heard a doubt suggested as to the effect (outside New Zealand) of a decree under the provision. I do not entertain that doubt. The tendency of recent decisions has, I think, been rather to modify in the wife's favour the law, but your Lordships puts it more strongly.

16,069. You want a general provision on the subject?—Yes, there is something I should like to add, if I may.

16,070. There is one other point I want to ask you about, that is what is your rule with regard to publication in New Zealand?—We have provision in a recent New Zealand Statute which gives the judges of the Supreme Court, and also in the magistrate's court, power to prohibit publication.

16,071. May I read the section which I believe is the one to which you refer?—If you please.

16,072. It is section 65 of the Act of 1908: "The court may on the application of either the petitioner or the respondent, or at its discretion, if it thinks it proper in the interests of public morals, hear and try any such suit or proceeding in chambers, and may at all times in any suit or proceedings, whether heard or tried in chambers or in open court, make an order forbidding the publication of any report or account of the evidence or other proceedings therein, either as to the whole or any part thereof; and the breach of any such order or any colourable or attempted evasion thereof may be dealt with as contempt of court."—That is so. That has been extended to all cases, and covers such cases as charges of indecency, and rape, and all sexual cases.

16,073. The same provision has been applied?—Yes, it has been practically applied. That has been largely to prevent the abuse of the press by publishing indecent publications, and also very largely a protection of witnesses. It has often been found of extreme benefit where some young woman has been assaulted by some brute, and the woman has not only had to suffer the thing, but has had to go before a crowded court and give the full details of it. It has been felt that that is wrong.

16,074. Is that since this Act?—No, that Act was a Consolidation Act. The actual Act was in force sometime before. It is a Consolidation Act which does not fix the date of the legislation on the subject.

16,075. It does not deal with the other cases which are not divorce cases, but there is a general Act which deals with them?—Yes.

16,076. Is that considered necessary in the interest of public morals, so as not to disseminate these cases by the press?—It has been largely approved of and I am satisfied in saying that is necessary. The judge is not bound to exclude all persons, and practically the press and other persons would be allowed to remain, not to report, but as some sort of a check on the

abuse of this power by the court. It is considered well that there should be public persons present.

16,077. You have the double power, about reporting and about those in court?—Yes, that is so. There is one matter I would like to refer to. As to affidavit evidence, I should like to suggest that formal or uncontradicted matter might be proved by affidavit evidence.

16,078. That is the rule now?—I do not think that the parties should be allowed to give evidence upon affidavit.

16,079. (Lord Guthrie.) Is it only Supreme Court Judges who have divorce jurisdiction?—Only Supreme Court Judges.

16,080. How many?—There are six Supreme Court Judges.

16,081. Is there an appeal both on fact and on law?—The practice in New Zealand is that the judges sit in individual districts, and meet three times a year as a Court of Appeal, and amongst the others the appeals lie in divorce proceedings.

16,082. Are juries employed in connection with divorce cases in New Zealand?—Where there are damages, a jury, if asked for, is given. That is provided for by the Statute.

16,083. Where damages are not asked a jury is not employed?—I am not sure. You have the Statute and its provisions.

16,084. In all divorce cases are the parties represented by solicitors?—By counsel.

16,085. In New Zealand have you barristers and solicitors as we have in England?—It is rather complicated. For a man to pass as a barrister there is a more difficult examination necessary. You can pass as a solicitor by a less serious examination than you can for the bar. If you pass for a barrister you must take a degree or pass an examination.

16,086. Audience in the Divorce Court is limited to those?—Barristers can practise as solicitors, but solicitors cannot practise as barristers, as in America.

16,087. The point is, audience in divorce cases for solicitors who are not barristers?—Yes. My statement is not correct. A solicitor or a barrister can appear.

16,088. In how many parts of New Zealand do the judges sit for divorce cases in different places?—There are five centres, but the judges go on circuits in effect. Districts have a very much larger number of places in which there is the same jurisdiction.

16,089. They take divorce cases in each place?—Yes.

16,090. So far as you know do all Protestants avail themselves of the provisions of the Divorce Acts when occasion arises?—I think both Protestants and Catholics.

16,091. Have you found Catholics, avail themselves of the Divorce Courts?—I have found Catholics avail themselves of the Divorce Court. I think so, but I would not like to commit myself.

16,092. Apart from Catholics, have you found the Episcopalians do so?—Frequently.

16,093. Can you say whether they have availed themselves on any cause except adultery?—Yes, I am satisfied that is the case.

16,094. Is it your experience that cases of divorce are treated as very important cases, and carefully tried?—The judges take care that they are very important, because at all events they have acted exactly—except when the Legislature has interfered they have been governed by the practice and procedure of the English courts and by their precedents. They have looked upon divorce as not a question between individuals, but a question in which the public is largely concerned, and therefore they are equally watchful to see that it is attended to.

16,095. Is any provision made for poor people?—No, there is no special provision.

16,096. You have not found any need for that?—No. I might say there is not the same degree of poverty. I think I am justified in saying—I can correct it if I am incorrect—pure recrimination as such has been excluded from the New Zealand Act.

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[Continued.]

16,097. (*Chairman.*) May I read the section: "If in the opinion of the court the petitioner's own habits or conduct induced or contributed to the wrong complained of, such petition may be dismissed: but in all other cases under this section if the court is satisfied that the case of the petitioner is established, the court shall pronounce a decree." ?—That excludes recrimination.

16,098. That excludes recrimination; it allows the defendant and also your public authority to say how the petitioner contributed to or induced the wrong?—That is apart from recrimination.

16,099. It does not prevent the petitioner getting his decree, even though he has been guilty of adultery?—That is what I wish to convey. Recrimination has been used in the sense that misconduct does not conduce.

16,100. (*Lord Guthrie.*) Recrimination in the proper sense, namely, that the petitioner has been guilty of adultery, is not the law of New Zealand?—It is not. That is the conclusion I draw from that section.

16,101. (*Sir Lewis Dibdin.*) You have largely added to the causes of divorce during the last 12 years?—That is so.

16,102. One of the new grounds was created on account of a single case?—Yes.

16,103. Another one is that the respondent has been convicted of murder of a child of petitioner or respondent. Why is not the respondent hanged in that case?—Will you read it again?

16,104. "That the respondent has been convicted of murder of a child of the petitioner or respondent"?—He may have been reprieved. He is hanged, as a rule.

16,105. To provide for the case of a man who is sentenced to be hanged and is reprieved?—Yes.

16,106. That is considered sufficiently important to make it a separate ground of divorce in your legislation?—Probably some legislator when the Bill was passed got that into his head, and in order to get the Bill through it was carried.

16,107. I gather there was no great opposition in the way of public opinion to any of these changes?—It passed without any such discussion as would have led me to have considered there was.

16,108. There was nothing like public agitation?—Nothing like public agitation.

16,109. There has been nothing like public agitation since?—No, I do not think so.

16,110. The public acquiesced readily in the law as it has been changed?—The public generally. I still

think that those who hold the sacramental view of matrimony—

16,111. They avail themselves of the facilities of Divorce Law in New Zealand?—I do not think those who hold the sacramental view do. All Anglicans do not.

16,112. I think you said, as far as your memory served you, Roman Catholics did take advantage of the Act, and certainly Anglicans did?—I have never had my attention drawn to the absence of any Catholics.

16,113. On the whole, there is no opposition to the law as you have had it altered in New Zealand the last 10 or 12 years, and to the enlargement of divorce jurisdiction?—No active opposition.

16,114. Are you aware of latent opposition?—No. I can only assume there must be latent opposition from those who hold the opposite view.

16,115. You are not aware of it?—No, being latent, I should not be.

16,116. The result of the changes has been to increase the number of divorce cases three-fold?—Not the absence of opposition. The result of the legislation has been.

16,117. To increase the number of divorce cases three-fold?—Yes.

16,118. During the period of 12 years?—Necessarily.

16,119. The fact is so?—Yes, but may I say "necessarily," because I think the necessary result of substituting divorce for judicial separation has been to increase the divorces at the expense of judicial separation.

16,120. (*Chairman.*) You have not the figures for judicial separation?—No.

16,121. Some of those cases would have been for judicial separation possibly which are now divorces?—Yes, a very large number of them. All simple desertion and all adultery without aggravated circumstances.

16,122. Who are your Ecclesiastical Authorities in New Zealand?—There is no State Church, consequently there is no Ecclesiastical Authority, but we have a very large and powerful Anglican Church, and a large and powerful Catholic hierarchy, and Nonconformists.

16,123. Is there a Bishop of New Zealand?—There are five or six Bishops in New Zealand. There is the Primate. I should say there are five or six.

(*Chairman.*) We thank you very much indeed for your evidence, which I am sure we have listened to with great attention.

Adjourned.

Winchester House, St. James's Square, London, S.W.

TWENTY-FOURTH DAY.

Monday, 6th June 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace The LORD ARCHBISHOP OF YORK.
The Lady FRANCES BALFOUR,
The Right Hon. THOMAS BURT, M.P.
Sir WILLIAM R. ANSON, Bart., M.P.

Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
EDGAR BRIERLEY, Esq.
The Hon. HENRY GORELL BARNES (*Secretary*).

(*Chairman.*) I want to put in the resolutions that have been passed by a number of the branches of the National British Women's Temperance Association. I think I get one or two every day nearly which, of course will be printed in due course. Practically, without going through them, they protest against sexual in-

equality; they recommend that the sexes should be placed on the same footing. I do not think it is necessary that you should be troubled to read all these now. They will be printed in due course; but I wanted just to put them in, in order that they should be before the members of the Committee. For instance,

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[Continued.]

here is one, the largest that has now come in; I think this must be from the Central Office. I can take that perhaps as a type of the rest: "I beg to forward to you a copy of a resolution passed at the recent Annual Council meeting of this Association, which was attended by 900 delegates from all parts of England and Wales. I am, my Lord, yours faithfully, Bertha Mason, Treasurer. Resolution—That this Council of the National British Women's Temperance Association, representing 130,000 women, desires to make a strong and indignant protest against the statements made by Mr. Justice Bigham

"and others in their evidence before the Royal Commission on Divorce, that a different standard of morality should govern the action of men and women, and that the present unequal divorce laws should be allowed to exist. This Association holds that the enunciation and publication of such views is calculated to have a disastrous effect upon the morals of young people and will tend to impair the purity of the marriage relations in this country." Without going through them all, I think they are in that form. It is right they should be on the notes and put in our appendix.

Sir RICHARD SOLOMON, K.C.B., K.C.M.G., K.C., called and examined.

16,124. (Chairman.) I think you are the Agent-General for the Transvaal?—Well, I was until last week, and now I am High Commissioner for the Union of South Africa.

16,125. I beg your pardon; I ought to have noticed the change in the last few days. You have been kind enough to consider the points which you present in a memorandum on the state of the law in the Cape?—Yes.

16,126. Which possibly may be of assistance to us in this inquiry. You yourself have had a long experience, as we all know, in South Africa?—Yes, I was at the bar from 1879 to 1907.

16,127. Was that principally in Cape Colony?—I was in Cape Colony until 1901, when I went to the Transvaal. I was Attorney-General of Cape Colony from 1898 to 1900.

16,128. And then after that?—Then I went to the Transvaal and was Attorney-General of that Colony from 1901 to 1907, when I left to take up the duties here of Agent-General of the Transvaal.

16,129. Does the same law apply to the whole part?—Yes, it is the Roman-Dutch law, the common law of the country.

16,130. Does that apply to Natal?—Yes.

16,131. The first point you mention is, "The courts in which action for divorce and judicial separation are tried"?—Yes.

16,132. What are those courts?—All actions for divorce and judicial separations are tried in the Superior Courts; that is to say, before one or more of the judges of the Supreme Court, without a jury.

16,133. Is that only at the central place in the Colony, or do you take them round to different parts?—There is a circuit court in each Colony which goes round twice a year.

16,134. And takes those cases?—Not those alone. Each circuit court has jurisdiction within the particular district.

16,135. But I mean you try this class of cases at different points where the judge sits?—Yes, by one judge and no jury.

16,136. And no jury?—No.

16,137. Is that an old rule or a rule laid down in modern days; or is it the general rule of the Dutch law?—It has been the general practice in South Africa to try civil cases without a jury. There is a Statute in the Colony for trial by jury in civil cases, but it is very seldom used. I do not think it would include an action for divorce.

16,138. Would you give us the benefit of your experience in saying whether you think that the jurisdiction exercised by the judge alone works well?—I think very well.

16,139. What are the grounds on which the decree of divorce is granted in the Colony?—I may say the main grounds are adultery and malicious desertion. The Roman-Dutch law authorities say, any other cause tantamount to adultery and malicious desertion (such as an unnatural offence), or perpetual imprisonment. But I may say up to 1906 the only ground on which any of the courts in South Africa granted a divorce or on which a divorce was petitioned for were adultery and malicious desertion. In 1906 a woman petitioned for a divorce against her husband in the Supreme Court of the Orange River Colony on the ground that he had been sentenced to imprisonment

for life, and the court, acting on what was understood to be the Roman-Dutch law, granted a divorce. Then in 1908, in the Supreme Court of Cape Colony, a woman brought an action for divorce against her husband, who had been sentenced to death, and the sentence commuted to imprisonment for life, and that court also granted a divorce. So I think it can be said that in South Africa a divorce would be granted in the case of imprisonment for life.

16,140. That is what you previously said, really tantamount to desertion?—Yes.

16,141. Then what are the grounds on which an order for judicial separation is granted?—I think if I may say so the law with regard to judicial separation is more elastic than it is in this country, if I rightly conceive the law of this country. The law in South Africa on judicial separation is founded on an old Dutch Placart, or Statute, of 1656, which gives the court power to grant judicial separation. I will give the words: "If domestic troubles should become excessive and last long." That placart, I may say, is the foundation of the law in South Africa on the subject, and, generally speaking, the court will grant the decree if satisfied on the evidence that living together is dangerous to the health of the petitioner, or at least intolerable. These of course are very much in the discretion of the court: "What amounts to dangerous or intolerable is very much in the discretion of the court. It must be satisfied that the conduct of either party to the other can be said to amount to danger, or considering the habits, rank, and social position of the parties, whether the conduct of the one to the other can be said to be intolerable, for what is intolerable to a person of refined feelings and of education may not be so to an uneducated person, or to one of coarse or vulgar habits." That, I think, is the general principle of our law with regard to judicial separation.

16,142. Are you able to say how that is put into force as distinct from divorce; whether there is a very small number of those cases compared with a large number of divorce?—No, I am afraid I cannot give statistics; but the grounds for divorce are quite different from those for judicial separation. A person can obtain a judicial separation on grounds which justify an order for divorce.

16,143. But you cannot give us statistics as to whether one is more largely availed of than the other?—No, I could not.

16,144. Then with regard to equality of the sexes; what is the position of the law in South Africa with regard to that?—It has always been the law that there should be absolute equality; that is to say, what would be ground for divorce against the wife would be equally good ground for divorce by the wife against the husband.

16,145. How have you found that law work?—I have never heard a complaint against it; and I know this, that no attempt has ever been made in any of the Parliaments in the different Colonies of South Africa to alter the law.

16,146. Is that equally so with regard to the law of divorce and judicial separation?—Equally so.

16,147. Then what are the grounds on which a plaintiff can be met with an answer?—Very much the same as in your law; collusion, condonation, or adultery on the part of the plaintiff.

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[Continued.]

16,148. And connivance?—And connivance, yes.

16,149. Then point 6 in your proof, I want to ask an explanation of. Is there a preliminary proceeding before a divorce is granted?—May I state what the usual practice is?

16,150. Yes. There is a suggestion here that the first step to get a divorce on the ground of malicious desertion is to apply for restitution?—Yes. I may say formerly under the procedure of South Africa there were two separate actions for divorce on the ground of malicious desertion. The first action was for a restitution of conjugal rights. Then if an order was granted, on the non-compliance with that order by the respondent, the plaintiff would institute a new action for divorce on the ground of such non-compliance. Then in order to save costs these two actions were amalgamated, and the usual course now is for the plaintiff in his summons to claim a restitution for conjugal rights, and in case there is a non-compliance with the order, a divorce.

16,150a. Then what are the grounds referred to in No. 6 in your memorandum on which that will be met. Your memorandum simply states the grounds on which the court will refuse to act?—Well, if the respondent shows (taking the case of the wife being the respondent) good reason why she should not return to the husband; for instance, that living with him is intolerable—

16,151. Then the malicious desertion must be desertion without good cause?—Yes.

16,152. It must be good cause for going away?—Yes. Certainly, any cause which would justify the court in granting a judicial separation would be a good answer to an action for restitution of conjugal rights.

16,153. Is there any term for the desertion to run before it becomes operative?—No.

16,154. Or may it be granted immediately?—Yes, I know a case in which a summons was issued for restitution of conjugal rights six days after the wife left her husband.

16,155. And that was followed by divorce?—And that was followed by divorce. Of course it was a very clear case of desertion.

16,156. Now they are combined you say?—Yes.

16,157. So that divorce can be granted for malicious desertion immediately after that desertion has occurred?—Not quite. You sue for restitution of conjugal rights, and on non-compliance with the order, for a divorce. The court hears the evidence, and if it is satisfied that the order for restitution of conjugal rights should be granted, it grants the order and directs the defendant to return to the petitioner on a certain day; and within a certain time after that date to show cause why a divorce should not be granted.

16,158. Have you any idea how long the "certain time" after that date is?—It must not be less than seven days.

16,159. Practically it amounts to this, that by virtue of that proceeding there is no waiting for three or four years?—No.

16,160. Then you have a very simplified procedure to minimise the costs?—That is what I have just been giving.

16,161. What is the effect of a decree of divorce or judicial separation on property?—The general rule is that the guilty party forfeits in favour of the innocent all benefits derived or still to be derived from the latter from the marriage, whenever such forfeiture is claimed by the petitioner. I dare say you are aware in South Africa, where we have the Roman-Dutch law, that when parties are married without what is called an ante-nuptial contract (that is a contract providing for the settlement of property and so on), they are married in community of property, that is to say, whatever property belonged to one or the other at the time of the marriage is shared between them after; they are equal partners in that joint property; and on the death of the one the other is entitled to half the joint estate.

16,162. But a divorce forfeits that?—Yes when such forfeiture is asked for by the petitioner.

16,163. And the one who is successful takes the whole?—Well, if the man brought into the common estate 5,000*l.* and the woman 150*l.*, and they are married in community of property, she would be entitled to half that estate; but if the husband gets a divorce from her she would forfeit her half in the 5,000*l.* and she gets back the 150*l.*

16,164. Supposing she gets a divorce against the man who brings 5,000*l.*?—Then he would only forfeit his share of what she brought in.

16,165. She would not take any benefit in his 5,000*l.*?—No, the guilty party only forfeits what benefit is derived through the marriage from the other party.

16,166-8. Is that so when parties are married not in community of property but ante-nuptial contract?—Yes, the principle I have stated is the same.

16,169. Are the benefits under the ante-nuptial contract also forfeited?—Yes. So that divorce is a very serious thing out there. It involves the forfeiture of property and the custody of children and so on; and if I may venture an expression of opinion, I hope no jurisdiction to try cases of divorce will ever be granted to inferior courts in South Africa. I think, considering the highly penal consequences, they ought to be tried by the most highly qualified men.

16,170. Might I venture to ask this; amongst the poorer classes there are practically no settlements and no property?—No.

16,171. Would it be as important then that the High Court should deal with it?—Yes, for there are the children, and the general rule is that the guilty party should be deprived of the custody of the minor children, and therefore it is very important to come to a proper conclusion as to guilt.

16,172. Therefore, you think the High Court only should have the jurisdiction?—Yes. I am only dealing with South Africa, of course; I do not venture an opinion as to what should be done here.

16,173. Is there any restriction as to the marriage of the two parties who are guilty together?—Yes, that is illegal, that is to say, the marriage of the guilty party to the person with whom the act of adultery was committed on which the divorce was granted.

16,174. Of course, either of them can marry an independent person?—Yes.

16,175. But the two—?—The guilty parties cannot marry.

16,176. Is that absolute or discretionary in the court?—The court would not interfere on the application of one of the guilty parties themselves. I know a case where the guilty persons were married afterwards, and then one of the guilty persons, not being happy with the person she married, applied to the court to have the marriage cancelled on the ground of its being illegal; but the court said they would not interfere on the application of the guilty person.

16,177. They let them alone?—Yes, but on the application of some third person the court could interfere and annul the marriage.

16,178. On questions of property and so on?—Yes.

16,179. Is that an old rule?—Yes, it is laid down by the Roman Dutch authorities.

16,180. Is there any means of avoiding it (I do not mean it in an offensive sense) by leaving the names of the guilty parties out. In Scotland, we are told, the law is precisely as you have stated it—that the two guilty parties cannot inter-marry, but that that only applies when they are named in the decree; and that the judges in Scotland always leave out the names in the decree, so that it does not become operative?—I do not think that is ever done by the judges in South Africa.

16,181. That is not so?—No.

16,182. They leave it out on good grounds, we are told. That is stated to be the rule?—Yes.

16,183. Then, the last point to which you refer is the grounds on which the plaintiff can bring an action for divorce, or the defendant can defend such action, *in formâ pauperis*. Have you some practice about that?—Yes, a person can apply to sue *in formâ pauperis* in any civil case if he satisfies the court that

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[Continued.]

he is possessed of no property above 10*l.* beyond wearing apparel and furniture.

16,184. And the defendant in the same way may get leave to defend?—Yes, if the court is satisfied that there is a *bonâ fide* case.

16,185. How does that apply to a woman who may have nothing when the husband is well to do?—Supposing the woman is either defendant or plaintiff?

16,186. Yes?—Well, the court would require the husband to allow her a certain amount to carry on the proceedings.

16,187. That would destroy the *in formâ pauperis* necessity?—Yes, she need not apply *in formâ pauperis* then; she can apply for assistance from her husband.

16,188. That is very much the same thing as here, then?—Yes.

16,189. As regards the security for the wife fighting her case?—Yes, quite.

16,190. One other matter. In your High Court which deals with these cases, are the professions amalgamated in South Africa?—No, they are distinct, except in Natal.

16,191. But where they are distinct, have the bar only the right of audience in the High Court?—Yes, where they are distinct.

16,192. In Natal they are united, and the legal practitioner there has the right of audience?—Yes.

16,193. In the other branches of the Colony the bar has the exclusive right of audience in these cases, amongst others?—Yes; but on circuit, as far as I remember, if there are less than three advocates present a solicitor may appear.

16,194. Do you think that is a good thing to maintain?—The separation of the professions?

16,195. Yes?—I do, certainly; I am strongly in favour of it.

16,196. And that the dealing with these cases should be in the higher branches of it?—Yes.

16,197. (*Mr. Burt.*) Are there many cases of divorce in the Transvaal?—I have some statistics here. The last statistics I have got are from the 1st July 1907 to the 30th June 1908. The number of divorce cases tried in the Transvaal is 265; and of these 157 were tried in the Witwatersrand High Court. That is to say, the High Court of Witwatersrand is a one judge court presided over by the judge of the Supreme Court having jurisdiction in the Witwatersrand District; so that more than half of those cases rose in the Witwatersrand District.

(*Chairman.*) Would Mr. Burt ask what is the population in the Transvaal?

16,198. (*Mr. Burt.*) Yes. Can you give the proportion of the population?—The European is about 300,000 and the native and coloured population close on a million; of course I cannot say how many of these cases were between Europeans and how many between coloured persons, but the number of divorce cases between coloured persons would be very small indeed—quite a negligible quantity.

16,199. Are all these cases tried in Pretoria?—No. If the case arises anywhere in the Transvaal it can be brought into the Supreme Court of Pretoria, if it arises in the Witwatersrand District it can be brought in the Supreme Court of Pretoria or the Witwatersrand High Court.

16,200. Have you any information as to whether there is any considerable increase there in the number of divorce cases to the population as compared with Cape Colony?—A very large majority of divorce cases in the Cape Colony and the Transvaal, and everywhere in South Africa, are undefended; there are very few defended cases. I could give you some statistics of Cape Colony if you like. I find in the Cape Colony, in 1908 the number of divorces granted on the ground of adultery was 56. The European population of Cape Colony is about 580,000 and the natives and coloured about a million and three-quarters, and the orders for restitution of conjugal rights (followed no doubt by divorce after) 57, and the decrees of nullity of marriage three. I might mention—it might interest the Commission—in the last Statistical Report of the Registrar of the Supreme Court of the Transvaal, in dealing with the number of cases of divorce in the

Transvaal, he says, "It is interesting to note how divorce for adultery is declining in the ratio in which divorce for desertion is increasing. In 1902–1903, immediately on the termination of the war, 61·22 per cent. of the divorce cases were by reason of adultery and 38·78 per cent. by reason of malicious desertion. In 1908–1909, after a steadily progressing change, 34·25 per cent. of the cases are for adultery and 65·75 per cent. for desertion." Of course there is no doubt whatever that when malicious desertion is a good ground for divorce, collusion is more frequent than if adultery only is a ground for divorce.

16,201. What is the precise meaning of malicious desertion?—Well that is a question for the court to decide, whether desertion is malicious or not in all the circumstances of the case. I think generally it may be said the refusal to comply with the order for restitution of conjugal rights without any good reason is considered conclusive that the desertion is malicious.

16,202. Imprisonment for life is a ground for granting divorce?—Yes.

16,203. Is lunacy, if permanent and incurable?—The insanity of either party at the time of marriage is a ground for a decree of nullity of marriage, but it is not a ground for divorce. At least it has never been held so.

16,204. I am not sure that I caught what you said on the question of the equality between the sexes?—Well, I mean to say there is absolute equality; there is no difference whatever. What is a ground for divorce for a man against his wife is equally a ground for divorce by the wife against the husband. In either case a single act of adultery is sufficient.

16,205. (*Lady Frances Balfour.*) Sir Richard, I gather that these cases were tried in the High Court?—Which cases? All the cases I mentioned?

16,206. The cases of divorce?—All tried in what are called Superior Courts.

16,207. But they go on circuit?—Yes, the judge goes on circuit.

16,208. And on circuit these cases are tried?—Well, for instance, he sits in different districts called circuit districts, and in any district in which he sits any cases of divorce arising within that district can be heard by him.

16,209. Can you tell us anything about the average cost?—No, I am afraid I cannot. I do not know what the solicitors' costs are. I know counsel's fees are very small. What I mean is this; as I said before, a large majority of actions for divorce are undefended, and in the case of an undefended action for divorce the brief is generally given to a junior at the bar, and the fee is not high.

16,210. And the courts being on circuit makes it cheaper?—Yes, because the witnesses are at hand.

16,211. Can you tell us at all the position of the Churches towards divorce, either of the Dutch Reformed Church and Episcopal Church?—No, I do not think I have ever heard them express their opinion. There is no agitation against the law. That is all I can say.

16,212. (*Sir Lewis Dibdin.*) I think you said there were 265 suits for divorce in the year 1907 to 1908 in the Transvaal?—That is according to the statistics, yes.

16,213. I did not gather whether those were suits instituted or decrees pronounced?—Well, I just took the words of the return. The Statistical Report says, "Number of divorce cases heard." I think the majority of those would be cases in which a decree was granted.

16,214. And the great majority of those are undefended?—Oh, yes, the majority, I should think so.

16,215. Have you any practice corresponding to the King's Proctor in England?—No, none whatever. I mean a decree granted by the court is final at once.

16,216. So that there is no one to watch the proceedings on behalf of the State?—No, but I may say this, that of course the practice there is that if the courts are suspicious that there is collusion between the parties, then they may appoint a curator *ad litem* to the minor children to make an inquiry.

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16,217. That is before the decree is granted?—Yes.

16,218. So that that is a sort of substitute for our practice of the King's Proctor?—Yes, but once the decree is granted it is final.

16,219. But that is intended as a safeguard against collusion?—Yes; when the court suspects collusion.

16,220. Is that often done in fact?—No, not often.

16,221. I gather from your evidence in chief that the danger of collusion, in desertion cases at any rate, is very considerable?—I think it is more considerable than it is in the case of adultery alone, because if two people want a divorce they can easily arrange between themselves that one should go away and not come back.

16,222. So it is extremely difficult to detect collusion?—It is; and that is the danger of making malicious desertion a ground of divorce.

16,223. And we find from the statistics the number of decrees granted for desertion is largely on the increase as compared with decrees granted on the ground of adultery?—It was so in the Transvaal the last year that I have statistics of.

16,224. Is that confined to the last year or is it the trend of the events of late years?—No, I have read the reports showing that from 1902 to 1903 the number of divorce cases on the ground of adultery was much larger than desertion; and from 1903 to 1909 that is completely reversed. I have not any other returns.

16,225. Are we to take it that 1907 to 1908 is a sporadic case, or is that what has happened since 1902 year by year?—No, I cannot say it is happening year by year, but I should say probably the number of divorce cases on the ground of malicious desertion is greater than the number of cases on the ground of adultery in the case of the population living in larger towns, but not in the case of the country population.

16,226. Then the proportion of cases is increased on that ground?—Yes, I think so.

16,227. Apparently your jurisdiction in judicial separation is a very wide one?—Yes, I think it is.

16,228. And leaves a great deal to the discretion of the court?—Yes.

16,229. From your experience would you be in favour, as far as South Africa is concerned, of abolishing the jurisdiction in judicial separation?—No.

16,230. You would not?—No.

16,231. You think it meets a need which exists?—Yes.

16,232. That it would not be enough to have divorce jurisdiction only?—No.

16,233. I do not think I quite understand about the case you told us of where a summons had been issued for restitution, I think you said six days after desertion?—Yes.

16,234. How soon would that be heard?—I cannot say the exact time.

16,235. But days, or weeks, or months?—It would depend entirely on the service of the summons. If the defendant has left the country, then you have to try and serve the summons on him personally if possible; if not, in some way that the court directs.

16,236. Substituted service?—Yes, substituted service. In that particular case, as far as I can remember, the defendant had not left the country, and so the summons was left on her, and the case was heard in a very short time.

16,237. What does that very short time mean; days or weeks?—I should think three or four weeks.

16,238. And then a decree in that case was made for restitution?—For restitution of conjugal rights.

16,239. And how long was the term given to the spouse to return to cohabitation? You told me the minimum was seven days?—The court orders the defendant to return to her husband by a certain date named in the order; well, that depends where she is. If she is in the country, it is a very short time.

16,240. But I am dealing with the particular case you told us of?—I cannot say exactly, but I should think probably if she is in the country, she would be ordered to return within a fortnight; and then the court also directs that she must show cause within a certain time after that return-day, not less than

seven days, why a decree of divorce should not be granted.

16,241. How long would she be given to show cause, after the fortnight for return has elapsed?—The time is fixed in the order, but it is not to be less than seven days.

16,242. But about the particular case you are dealing with?—Well, I do not know the particulars of that case, beyond the fact that summons was taken out six days after desertion.

16,243. The great advantage of a particular case is that it happened and is concrete?—Yes.

16,244. We have it up to this point that probably a fortnight is given to return to cohabitation. How long is there given her to show cause why a divorce should not be granted?—I should say days, not weeks.

16,245. Shall we say a fortnight?—Yes, I think so.

16,246. She did not show cause in that time in this case?—No.

16,247. And then does the divorce follow?—Yes, as a matter of course.

16,248. As soon as the time has expired?—Then the plaintiff comes to court and an affidavit is made that the wife has not returned, and the time has elapsed for her to show cause, and the order is made.

16,249. Then is that —?—That is a very exceptional case.

16,250. How exceptional?—In the duration of the absence of the wife before proceedings are instituted.

16,251. Well, in that particular case I suppose the divorce covered about six weeks after she deserted her husband?—Probably.

16,252. But you say that is shorter than general?—Yes, I should say that is a very exceptional case.

16,253. Can you give me any idea what would be a kind of average time?—Before proceedings are instituted?

16,254. No, before the divorce is through?—That depends on whether the respondent has left the country or not. If the respondent has left the country—

16,255. Yes, then it might take any time?—Yes.

16,256. But take a normal case, where the defendant has not left the country?—Then, of course, it would not take long, that is all I can say.

16,257. But six weeks, you say, is an exceptional time?—It would be known where she is and personal service could be effected.

16,258. But you told me six weeks is an exceptionally short time?—Yes.

16,259. Well, I want to try and get what you would regard as an average time?—Yes, six weeks was an exceptionally short time, because proceedings were instituted directly after she left.

16,260. Yes, I accept that and want you to tell me the average time?—From the time the proceedings are instituted?

16,261. Yes, if you like?—If the defendant is in the country and can be personally served, then there is no difference in a case of that kind and any other case.

16,262. Then I did not quite understand the effect of the law of community between spouses. It is my ignorance of Roman Dutch law. I understand when there is a divorce decree or judicial separation, that the community is dissolved, and each spouse takes back the property which that spouse had at the time the community began?—Not in the case of judicial separation. In the case of judicial separation the joint estate is equally divided between the husband and wife after payment of the debts of the joint estate.

16,263. Is equally divided?—Yes.

16,264. I had not caught that difference in your evidence. Now take the case of divorce. There the effect of the divorce is that the community is broken, and whatever property each spouse had when the community began is relegated to that party?—Not quite. The guilty party forfeits in favour of the innocent the benefits the former has derived from the latter from the marriage.

16,265. Is there any law as to what happens to property acquired during the coverture?—Well,

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supposing during the marriage the husband comes in for a very large sum of money; if they have married in community of property the wife shares that with him, but if there is a divorce and the wife is the guilty party, she takes no division in that property.

16,266. So that, as far as property goes, during the coverture, it follows the same rule as property they had at the beginning of the coverture?—Yes.

16,267. Now we are thinking here a good deal of poor people and their matrimonial troubles, though not exclusively?—Yes.

16,268. Now the goods of a man and his wife amongst the working classes is very often simply their furniture and that kind of thing?—Yes.

16,269. Property which is of small money value but is of great value to them?—Yes.

16,270. What would happen in a case like that when a man and his wife had been married perhaps 10 years and the furniture had been got when they married and their household goods varied, but there was a definite amount of household goods when the community came to an end?—Supposing they were married in community of property, you mean?

16,271. Yes, and there was a divorce?—Well, I suppose you inquire as to whose money really bought the furniture. If the husband really bought the furniture, and the wife only had a half share in it by virtue of the marriage, and she was the guilty party, she would get nothing out of it.

16,272. So that, as far as possible, exactly the same law is applied with poor people as with rich people?—Yes, no difference at all.

16,273. Did I hear aright that the community is dissolved so that the effect is the same with the guilty party and the innocent party? Take a case where the man is the petitioner and the wife is the guilty party, and there is a divorce; they are married in community and the community is dissolved; then each takes the property they had at the time of the marriage or have acquired since?—Yes; but I believe the rule is that the guilty party is entitled only to so much of his or her half share of the joint estate as he or she brought into the community if it be less than one-half.

16,274. And that whether they are guilty or innocent; the wife would have exactly the same whether she is the innocent or the guilty party, would she not?—Well, I am not sure that I quite understand you. You mean supposing the wife brings the action for divorce and the husband is guilty.

16,275. Yes, well take it your way?—And he had brought in practically the whole of the common estate; she would not forfeit her half share in the property.

16,276. She would not?—No, she is the innocent party.

16,277. But he would not get any share in anything she had?—No.

16,278. But she would retain her share in his property?—Yes; in anything exceeding half the joint estate.

16,279. With regard to what you told us as to the guilty parties marrying. It seemed very like our law before Lord Lyndhurst's Act. As I gather, unless some step is taken the marriage of two guilty parties for practical purposes holds, does it not?—Well, it is left alone, I suppose.

16,280. Well we will assume no proceedings taken either by themselves or by a third party at all, and that children are born. Are those children legitimate or illegitimate?—I think legitimate. I do not think the marriage is *ipso facto* null and void, but it can be set aside.

16,281. But would the children be legitimate or illegitimate?—The children would, I think, be legitimate. The children are born before the court interfered.

16,282. And, of course, no proceedings could be taken after the death of either of the spouses?—No.

16,283. I am assuming a case where the court does not interfere?—Yes.

It is like our law before Lord Lyndhurst's Act?

(Chairman.) Voidable.

16,284. (Sir Lewis Dibdin.) Well, I do not like the word voidable, but if it were annulled it would be annulled *ab initio*?—Yes.

16,285. And all the children would be illegitimate?—Well, I should not like to say as to that.

16,286. But if no steps are taken the marriage is unassailable after either spouse has died?—Yes.

16,287. You were asked by Lady Frances Balfour as to the opinion of the religious bodies in South Africa. Would you say that the Episcopal Church in South Africa acquiesced in the laws you have described?—I can only say there has been no agitation by any of the churches against the law. As far as I can remember, the only respect in which the common law of the country has been altered with regard to marriage is with regard to marriage with a deceased wife's sister. According to the common law that is illegal, but Statute law has made that legal, and there was an agitation against that legislation.

16,288. That is not divorce law?—No; I do not know of any other agitation as to marriage laws.

16,289. Are you familiar with the canons of the churches of South Africa as to their own laws?—No.

16,290. You cannot say whether they recognise or repudiate divorce?—I cannot say.

16,291. I say their canons?—No. I can give no opinion as to their canons.

16,292. (Mr. Brierley.) I understand you to say that the petitioner for restitution of conjugal rights, and consequent divorce on the ground of malicious desertion, has not to wait any time before she (that is the wife) brings her action?—No time is laid down by law.

16,293. If the respondent puts in no defence has she to prove anything beyond the fact that her husband has left her?—And the circumstances under which he left. The court must come to the conclusion under all the circumstances that he left maliciously. But the real ground on which they grant divorces is disobedience to the order for restitution of conjugal rights without good cause shown.

16,294. But if the husband puts in no defence does not it amount in practice to a divorce by mutual consent. What opportunity has the court of really finding out anything about the merits of the case?—It does not amount to that, because there are a great many cases in which the malicious desertion is clear; but I say it opens the door to collusion.

16,295. But you find in practice you have strong reason to suspect that it is really made use of for divorce by mutual consent?—Yes, I think it is often made use of for that purpose.

16,296. And that can be brought about in a very short period of time?—Yes.

16,297. Something less than two months?—Yes. I think, if I may say so, that it is a defect in the law. The practice in the Scotch law that there should be a duration of a certain time between desertion and the institution of proceedings is wise. I cannot say whether such duration should be for four years or less.

16,298. One other question. You told us that actions for divorce and judicial separation are confined to the superior courts. Have the inferior courts any jurisdiction in cases between husband and wife in the direction of granting separation orders?—No.

16,299. There is nothing corresponding to our summary jurisdiction causes?—No; all matrimonial cases have to be tried in the superior courts.

16,300. You have not found any necessity for that even in the large cities?—No.

16,301. (Chairman.) What inferior courts have you?—Magistrates' courts.

16,302. Have you anything corresponding to our county courts?—No. The jurisdiction of the magistrates' courts in the different colonies varies very much.

16,303. Have they a separate jurisdiction?—Yes; in the Transvaal the magistrates have a very wide civil and criminal jurisdiction.

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16,304. And in the Cape Colony?—Magistrates in Cape Colony have not so wide a jurisdiction either in civil or criminal cases as magistrates in the Transvaal.

16,305. But it is a similar jurisdiction?—Yes, they have jurisdiction both in civil and criminal cases.

(Chairman.) I think I ought to thank you very much.

Mr. ROBERT NEWTON CRANE called and examined.

16,306. (Chairman.) You are a member of the United States Bar?—I am a member of the Federal Bar of the United States.

16,307. And you are also a member of the English Bar?—I am.

16,308. Was your practice originally in the United States?—Yes, originally in the United States. I have been a member of the American Bar for 30 years, and I have been a member of the English Bar for about 16 years.

16,309. Have you on both sides of the Atlantic had experience of the divorce laws?—Yes.

16,310. You have practised in the courts there, and also in the courts here which deal with those subjects?—Yes.

16,311. I know I have seen you pretty often when I was formerly on the bench. In America were you Chancellor of what corresponds to a diocese in this country?—I was Chancellor for a short period of the diocese of Missouri.

16,312. Is that a large one?—It is the diocese in which St. Louis is located which has about 300,000 people in it, and at the time I was there it embraced the entire State of Missouri which had a population of perhaps two millions.

16,313. Has that office any jurisdiction?—No; that office is only as a legal adviser to the bishop in all matters in which he finds himself in difficulty. It has no jurisdiction in any of the courts. The Chancellor is simply a legal adviser.

16,314. Do you belong to any particular branch of the Church yourself?—I am a churchman. I should say an English churchman or Anglican Catholic.

16,315. What is the exact name in the United States?—The Protestant Episcopal Church of the United States.

16,316. You have been good enough to consider the questions to some extent which we have under consideration, and you have also taken a great deal of trouble in looking into statistics with regard to divorce in the United States. Perhaps you will read the first part of your memorandum which gives the figures?—I ought to preface that by saying a very extensive analysis of the statistics with relation to marriage and divorce has been compiled by the Census Bureau of the United States Government. It is an extremely extensive summary of everything that relates, as far as figures are concerned, to marriage and divorce, and those statistics cover a period from the year 1867 down to 1900, and then there is a supplementary collection of statistics down to 1906.

16,317. I think this is the book (*indicating*)?—Yes, that is the book you have before you.

16,318. We have already had it before us?—Now those statistics show, generally speaking, that there are more divorces in the United States than in any other civilised country other than Japan, and they amount in the United States, during the period mentioned, to 73 out of each 100,000 of the population.

16,319. In what period is that?—That takes the period from the institution of these statistics down to 1906. In Japan the statistics, I think, show 215 divorces per 100,000 of the population, and to compare that with other countries, in order to ascertain the relative frequency of divorce in these countries, it may be stated that in Switzerland there were 32 divorces per 100,000 of the population; in France 23, and in Germany 15. The remaining European countries average about 10, and in England during that period there were only about two to each 100,000 of the population. "The statistics further show that the rate of increase of divorce in

"the United States is far greater than the increase of population. Between 1870 and 1880 the population increased about 30 per cent., and the divorce increased a little over 79 per cent." Between 1890 and 1900 the rate of increase of divorce was three times greater than the rate of increase of population. Information has been acquired as to the relative increase of divorce there as compared with the increase of the marriage population, and it is stated by the compiler of those statistics that it is "fairly well established that at the present time every one marriage in 15 will be dissolved by divorce." There is no Federal law with regard to divorce in the United States. Each State has its own jurisdiction, and is regulated by local statutes as to the causes for which decrees may be granted—and the procedure of the court. It is the universal rule, however, that jurisdiction in divorce is governed not, as in England, by the domicile of the husband, but by the residence for a stated period of one or other of the parties. The length of the residence required varies from six months in Nevada and Idaho to three years in some localities, but in a large majority of the States 12 months. The law as construed, if the statutes are not express in terms, provides that the residence shall be "in good faith," that is, that there must be an actual, and not a mere legal and constructive residence. It imports a physical sojourning, or staying in the locality of something more than a mere transitory visit, and less than that which is required to constitute domicile. Unfortunately, as far as my experience goes, especially in undefended cases, comparatively little independent inquiry is made by the courts as to the facts relating to the nature of the residence. There is only one State, South Carolina, where divorce is not permitted, and only one State, New York, where adultery must be proved before a decree can be obtained. In all the States adultery is a ground for divorce, and, independently of adultery, there is a variety of other grounds. Desertion and cruelty, in varying forms and degrees, are common grounds in all the States. In 15 of the States—and I may say there are 46 States altogether—the desertion need be for only one year, in seven States it must be for two years, and in one State for five years. Cruelty is a cause in nearly every State, and, in some of the States, "outrages rendering life together insupportable," "indignities rendering condition intolerable," "personal abuse or conduct rendering life burdensome," and "treatment endangering health or reason," are also specified statutory grounds. In 35 States habitual drunkenness is a cause for divorce. In a very large majority of the States, conviction of felony is a ground. In five States conviction of felony prior to marriage and unknown to the other party, and in one of the States the fact that a spouse is "a fugitive from justice, is a cause for divorce, and associated with drunkenness in some of the States, is habitual addiction to various drugs, such as opium, morphia, and chloral. Insanity in varying degrees, from mental incapacity to incurable lunacy, is a cause in nine States. Vagrancy is a ground in two States, and neglect to provide for the wife and children of the marriage, is a cause in 19 States. In Louisiana public defamation of one party by the other, in Florida violent temper, and in Kentucky violent and ungovernable temper, are causes. In Kentucky, New Hampshire, and Massachusetts the joining of a religious sect, or society, which believes, or professes to believe, that the relation between husband and wife is void or unlawful, is a ground for divorce. Despite the widespread belief in England to the contrary, in no State is "incompatibility of temperament" a cause for divorce, with the possible exception of the State of Washington, where the statute authorises the court

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[Continued.]

to grant a decree when it shall be satisfied that for any cause the parties can no longer live together.

16,320. Might I ask for a moment, I have before me the census return to which you refer and I find (perhaps you will tell me if it is correct) that at pages 268 and 269 there is a catalogue giving in the column of the left-hand side the causes, and then the States in which those causes operate?—Yes.

16,321. We need not examine it in detail, but we can follow the summary you have already given us?—Yes.

16,322. Then will you proceed?—In two, at least, of the States, divorce operates automatically, and without the institution of legal proceedings therefor, in case of a sentence to imprisonment for life. Thus, in Wisconsin, it is the law that when either party shall be sentenced to imprisonment for life the marriage shall be thereby absolutely dissolved, without any judgment of divorce or other legal process, and no pardon granted to the party so sentenced shall restore such party to his or her conjugal rights.

16,323. Would you tell me how that operates in practice with regard to the proof, because no decree then would be drawn up?—No.

16,324. Would the party, if the question were ever raised, have to prove the conviction or sentence?—Yes; and if a party married under those circumstances—an innocent party—and any question arose with regard to the validity of that marriage, the mere production of the decree of conviction and the identification of the party would be sufficient. In my opinion it is significant that as divorces became more frequent in America, the tendency is towards an increase in the relative frequency of the grounds which involve the less serious offences. Forty years ago 40 per cent. of all the divorces were granted for adultery; at the present time only 15 per cent. are for that cause. During the period 1902 to 1906 desertion and cruelty as causes have risen from 47 per cent. to 62 per cent. of all the divorces. Furthermore, divorce is much more frequent in those States in which it is granted for less serious offences. While the average rate of divorce throughout the country, in 1900, was 73 per 100,000 of the population, in the State of New York, where adultery alone is a cause, the average rate was only 23. In Washington, where there are eleven different grounds for divorce, the average rate was 184.

16,325. One of those grounds being incompatibility?—Well, it is discretionary with the court.

16,326. Or something very near that?—Yes, something very near that. Of all the various causes for divorce, the most commonly relied upon is "desertion." This ground accounts for 38.9 per cent. of all the divorces granted in the period from 1887 to 1906. Desertion is not only a popular plea among litigants, owing to the ease with which the charge may be supported and the likelihood that it will not be defended, but because public opinion in the United States deals lightly with the offence. Perhaps it is a wrong way of putting it—it deals easily with the offence; the word "lightly" I should hardly like to use. In nearly every State there is a provision that the statutes against bigamy shall not extend to any person who, without obtaining a divorce, shall have married again, where the former husband or wife has been absent for five successive years and not known to such person within that time to be living. In certain of the States a wife may legally marry in these circumstances. The laws of Arkansas, for instance, provide that where any husband abandons his wife, or wife her husband, and resides beyond the limits of the State for five successive years, without being known to such person to be living during that time, death is presumed, and any subsequent marriage entered into after the end of the five years, is as valid as if such husband or wife were dead. Not only is there a great variety of causes for divorce in the United States, but the law is administered by a very large number of judges of diverse views and varying capacities. Even in the most sparsely settled of the newest States a term of

court at which marriages may be dissolved is held in each county two or three times in the course of the year. In the State of New York, which has approximately one-seventh the population of England and Wales, there are no less than 73 judges, each of whom has original jurisdiction in divorce. Upon a rough and, I think, conservative basis of calculation there are upwards of 1,000 judges in the United States who have authority to construe the divorce laws and to dissolve marriages.

16,327. Now take New York. Do they sit in more than one place in the State of New York?—Oh, yes.

16,328. They take circuits?—Yes. New York is a very populous State, and they do not move about on circuit as much as in the Western States. The cost of divorce in America is practically a matter of attorney's fees, as the costs payable to the State are merely nominal. As attorney's fees are subject to arrangement, and are not taxable, no definite statement can be made as to the actual cost of divorce to the litigant. It would be safe to say, however, that in ordinary circumstances in an undefended case, where the applicant for divorce is a person of limited means, the costs should not exceed 10% in the Eastern States, while in rural communities, particularly in the West, a reasonable inclusive expense would be half that sum. In none of the States is any distinction made between a husband and wife so far as the grounds for divorce are concerned, the remedies provided for by statute being equally available to both. Almost exactly two-thirds of the total number of divorces granted in the period 1887–1906 were obtained by the wife. The compilers of the official statistics find a partial explanation of this preponderance in favour of the wife in the fact that, without any reference to the question of which party is the more frequently responsible for the mutual unhappiness that leads to divorce, the wife has a legal ground for relief more frequently than the husband. Notably there is non-support, or neglect to provide, which, for the husband, is not ordinarily an available cause. Again, cruelty, although not infrequently the ground for divorces granted to husbands, is, at least so far as it is physical cruelty, more often existent as a cause for the wife. Five divorces for cruelty are granted to the wife for every one granted to the husband on that account. The only exception to the uniformity of the rule that, throughout the United States, twice as many divorces are granted to the wife as to the husband, is found in the Southern States, where there is a large negro population. In general, white women in the Northern States have a greater degree of economic independence than white women in the South. They have more opportunities to obtain employment and are more accustomed to the idea of earning their own living. This may influence their attitude toward divorce by making them less dependent upon their husbands for support, and more ready to dissolve the marriage tie when it becomes a cause of unhappiness or suffering. Drunkenness alone was the alleged ground for divorce in only five per cent. of the cases in which the wife instituted the action, and in only one per cent. of the cases in which the husband was the petitioner. But intemperance, when united with other causes, was a factor in about one divorce case out of every five. It occurred far less frequently, however, in those cases where the husband obtained the divorce because of the fault of the wife. In such cases intemperance existed in only about one case out of every 16. Where the husband was at fault intemperance was present in one case out of four. Now, in my opinion, implicit reliance cannot be placed upon the figures relating to the causes for divorce. They are accurate in so far as they are based upon the grounds assigned in the pleadings. But it is a matter of common experience that in very many instances the charges alleged in the petition are not, in fact, the true grounds. Where a comparatively trivial cause may be successfully relied upon, it is only natural that it will be pleaded to the exclusion of a more serious one. A husband, knowing his wife to be guilty of misconduct, will, through a mistaken idea of gallantry or to save

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scandal, base his proceedings against her upon some constructive act of desertion. On the other hand, a wife will find it much easier to procure a decree by charging her husband with a mild form of cruelty, or failure to maintain her, than if her proceedings were based upon adultery. In the latter case, the action would probably be defended; in the former, the chances are that it would be willingly acquiesced in. The existence of some form, or some degree, of mutual arrangement in a majority of the actions for divorce in the United States may be taken for granted. The large number of suits filed, and the ease with which decrees may be obtained, have a growing tendency to familiarize the community with divorce, and it must be admitted that it is now looked upon by people of respectability, in certain walks of life, as a popular and firmly established institution. The view is spreading that if an unhappily married couple desire to have their marriage dissolved it is a matter which is peculiarly their own affair, and one with which the public has nothing to do. If they mutually agree as to the result, the method of procedure does not much mind, as long as it conforms to the statutes and the rules of court, and provided also that there is no open fraud upon the court in suppressing and inventing evidence. It is true that the statutes of many of the States provide that connivance, collusion and condonation may be pleaded as a defence to an action for divorce. But, in the majority of cases, these statutes would appear to have been passed, not with intent to protect public morals, but rather to provide a weapon with which a respondent may contest the proceedings, and then only when the accusation is that of adultery.

16,329. The next paragraph is, I think, extremely important, if you will follow on with that?—In no State is there an official charged with duties similar to those of the King's Proctor in England, although in a few of the States the prosecuting attorney of the county is required to be served with notice of all divorce actions in order that he may enter an appearance, and, at his discretion, intervene in the proceedings. Mr. Amasa Eaton, lately President of the Commissioners on Uniform State Laws, who has taken a leading position among those who advocate reform and uniformity in the divorce laws in the United States, has recently written that he has never in his experience heard of any independent inquiry by the court as to collusion. In his opinion, if both husband and wife desire a divorce, it is difficult, if not impossible, to guard against collusion and connivance. The statistics show that of nearly a million divorces only about 15 per cent. were defended. Probably in many of the comparatively few that were defended, the defence was hardly more than a formality, perhaps not extending beyond the filing of an answer, which often has the effect of expediting the process of obtaining a decree. In all cases, other than those founded on misconduct, the figures indicate that the wife contests a divorce action more frequently than the husband. Of suits based on desertion no less than 91 per cent. were undefended. About three petitions out of every four are granted, but the proportion is higher in the Western States, where the causes for divorce are more varied. In none of the States, with three exceptions, is there any provision for a decree *nisi*, the decision of the court after hearing the evidence being embodied in a decree absolute. In nearly all of the States, however, there are provisions inhibiting the marriage of the guilty party for a shorter or longer time.

16,330. Is that provision a provision of general prohibition, or only of the two parties that have been guilty?—Of the guilty person.

16,331. Of the two guilty persons?—No, the guilty party with anybody. In most of the States where there is such a provision, it amounts to an inhibition, that the guilty party shall not re-marry.

16,332. With anybody?—Yes.

16,333. Are there any States that provide that the guilty party should not re-marry with the person with

whom he has been the cause of the dissolution?—Yes, there are two or three States.

16,334. But not generally?—Not generally. In the majority of States I should say there is no inhibition, but in a considerable number of them there is.

16,335. In general no prohibition; in some there is prohibition against any marriage at all?—Yes, and in a few there is an inhibition against the marriage of the guilty parties. I take the general rule because it is the action of the majority of the States, but not of a large majority. These provisions, however, are nevertheless ineffective, as they are regarded as penalties which are only enforceable within the State.

16,336. That means in the particular State—one of the 46?—Yes.

16,337. Do you suggest they get out of it by going into the next State?—Yes, if there is a provision of that kind, say, in the State of Ohio and the decree provides that the guilty party should not re-marry, he finds it easy to step across to Indiana, or to the west to Illinois, or to the south to Kentucky, and there be free from any law that was against him. The rule is, generally speaking, that the marriage is valid if it was valid where it was contracted.

16,338. So they avoid that difficulty if it is put in their way?—Yes, by going to another State, and the children of the union are legitimate children.

16,339. After such a step has been taken?—Yes. As has been mentioned, the only State in the United States in which absolute divorces are not granted is South Carolina, although there is in that State a well-developed system of legal separation. The inhabitants of South Carolina who desire divorce, and who can afford the expense, go to some other State, acquire a residence there, file their petition and secure a decree. It is said that persons divorced in this way, and who marry again and return to the State, are under a social ban, but, however this may be, that they are not under any legal disability is evident from the fact that Mr. Amasa Eaton—whom I have already mentioned—quoted the case of a resident of South Carolina who has been twice divorced in some other State and is now living again in South Carolina, and married the third time. Mr. Eaton does not consider it surprising that the denial of absolute divorce, no matter what the circumstances may be, has had its natural corollary in South Carolina in the adoption of a law limiting the amount of property a man, leaving lawful issue, may leave to his mistress or to his illegitimate children. The law provides that any gift, settlement or conveyance by any ways or means whatsoever, for the use and benefit of a woman with whom a man lives in adultery, or of his bastard child or children, in excess of one-fourth part of his estate, shall be null and void.

16,340. Might I stop you here for a moment, because, on ascertaining this point, I think I ventured to suggest, if you would be good enough to do it, you might communicate with South Carolina to see if any statistics could be obtained?—I did so.

16,341. Would you allow me to put it as I have it before me. The point you have just mentioned is somewhat fully stated in Mr. Bishop on marriage and divorce?—Yes.

16,342. At section 58 on South Carolina. I will not read the whole section; we can all read it after, but it goes on and makes this observation after an example:—"And so common is the form of polygamous union, not only that it is thus commended from the bench, but it has become necessary to regulate, by statute, how large a proportion a married man may give of his property to his concubine—superfluous legislation, which never would have been thought of, had not concubinage been common. Statutes like this are unknown, because not required, in States where divorces are freely granted. When the six-year-old statute allowing divorces was in 1878 repealed, the experiment was tried of making a living together in adultery or fornication—not a single illicit act—a crime. Whether this new statute is practically enforced is a question on which the author has no knowledge; whether it can be, while all divorce is prohibited, is one on which he does not propose to

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"speculate," and then he gives the statute, and this is it:—"If any person who is an inhabitant of this State, or who has any estate therein, shall beget any bastard child, or shall live in adultery with a woman, the said person having a wife or lawful children of his own living, and shall give, by legacy or devise for the use and benefit of the said woman with whom he lives in adultery, or of his bastard child or children, any larger or greater proportion of the real clear value of his estate, real or personal, after paying of his debts, than one-fourth part thereof, such legacy or devise shall be null and void for so much of the amount or value thereof, as shall or may exceed such fourth part of his real and personal estate." I believe that is the section you alluded to?—Yes.

16,343. The point seems to be that it has been necessary by legislation to prevent a man leaving more than a certain amount of his property to his illegitimate children, and the inference is that that is a common thing to do. That, therefore, led to the suggestion that if you could communicate with South Carolina and obtain statistics to show to what extent it prevailed it would be of useful service to us. I think you showed me just now the letters you have received, but you have not given me the letter you wrote.

(Sir Lewis Dibdin.) Would you make it clear what statistics you mean, Lord Gorell?

(Chairman.) Statistics to show in what number of cases it was found that people had acted improperly by concubinage and had had to be restrained with regard to part of their property. It seems to me the proportion might be small or it might be large.

(Sir Lewis Dibdin.) Do you mean the statistics as to the number of people living in the district under those circumstances?

(Chairman.) Yes; I rather wanted to get at the facts on which this legislation was based. Mr. Crane gave me some letters, but they have given no statistics, nor do I find the exact reason.

(Witness.) Unfortunately I did not ask for statistics, because it seemed to me it would be obviously impossible to procure any. I do not think any statistics would show what people were living in concubinage. I cannot conceive of any such statistics. It would be only a matter of individual opinion of the person whom I addressed; therefore, to get information with regard to the operation of the law, I addressed letters to two persons in South Carolina, and one of the two persons was the firm of Messrs. Buist and Buist, who are the leading lawyers in Charleston in South Carolina, and the other was the Bishop of South Carolina. I addressed them both personally. I have not my letter here, I am sorry to say, but the nature of my inquiries appears in the letter from Messrs. Buist and Buist.

16,344. That has come since your proof was prepared?—Yes. I may say I asked Messrs. Buist and Buist if they were not interested in this question from a sociological point of view, if they would turn it over to some other person; but they have personally replied, and they say: "Dear Sir,—We are in receipt of your favour of the 6th instant, asking certain questions in connection with the divorce law prevailing in South Carolina. Probably the most satisfactory way of answering you is to take up each query separately." My first question was, "Whether there is any greater or less regard for the marriage tie in South Carolina than in any other States"; and they reply, "The answer to this is necessarily a matter of individual opinion. We are inclined to think that there is a greater regard for the marriage tie in South Carolina than in other States." My second question was, "Whether husbands or wives or both are more or less likely to be indifferent to their marriage vows." The reply is, "Again, this is largely a matter of individual opinion. Our opinion is that the parties are less likely to be indifferent to their marriage vows in this State." Then I asked if there is a greater or less frequency of desertion, and the reply is, "We think there is a less frequency of desertion here." Then my next question was, "Whether residents of South Carolina, to any great extent, resort to other States

for divorce"; the reply is, "Residents of South Carolina do resort to other States for divorce, but we do not think this is done to a very great extent. In this connection it would be well for you to refer to the case of *McCreery v. Davis*." Then the next question was, "Whether, in case this is done, if, upon the return of such parties to the State, they are under a social ban." I did not ask if they were under a religious ban, because I knew they were, because in South Carolina the Episcopal Churches are more or less in the ascendancy and the Roman Catholic Church is strong there; and the answer is, "Yes, from our observation they are, to a greater or less extent, according to the society in which they move." Then my next question was, "What relief have the spouses in the cases of adultery, or any other of the graver causes for which divorce is granted in other States?" And the reply is, "the usual relief granted elsewhere, except the divorce *a vinculo*. The injured party cannot be married." Then I asked, "Are the inhabitants of the State, generally speaking, satisfied with the law as it now stands, or is there any agitation in favour of divorce legislation, such, for instance, as is embodied in the uniform divorce law which three of the States have adopted, and which, I am informed, is regarded with favour throughout the country?" The reply is, "We are satisfied that the inhabitants of South Carolina, generally speaking, are satisfied with the law on divorce in this State, as it now stands, and that at the present time it could not be repealed." Then I asked generally, "Is the law in your State based upon religious feeling or upon sociological ideas?" and the reply is, "We should say that the maintenance of this law now is based upon both of the ideas suggested, but we further think that sentiment enters largely into the question. You must recollect that South Carolina has been unique for a number of years in its attitude to the question of divorce, her citizens have been brought up from birth to believe that she occupies a higher plane on this question than other States, and they have a sentimental attachment for it as something akin to an inheritance."

16,345. Can you tell us the proportion of white and black in South Carolina?—Very nearly evenly balanced.

16,346. Then you have a letter from the bishop?—Yes, that is a little briefer. "My dear Mr. Crane,—Prolonged absence from home and rush of work have prevented my answering yours of May 6th. I have taken the liberty of reading your letter to the Rev. John Kershaw, D.D., a native of South Carolina, and rector of St. Michael's Church, Charleston, and he agrees with me on the following answers to your questions: (1) There is certainly greater regard for the marriage tie in South Carolina than in any other State. (2) Husbands and wives are also less likely to be indifferent to their vows, because they realise that the marriage tie is indissoluble in this State. (3) Desertion is extremely rare except among the white mill operatives in our mill villages. This is due in large measure to the changing and nomadic nature of the population, and to the further fact that we have no registration of births or marriages. (4) Residents in South Carolina do not resort to any noticeable extent to other States for divorce. I personally have known very few such cases. (5) Persons divorced in other States and returning to live here are decidedly under a social ban; the case cited by Mr. Eaton is on its face improbable, and unless he has positive evidence to prove it I would very seriously question its ever having occurred. Let me say, in conclusion, that so united are our people on the present law concerning marriage and divorce, that a few years ago they put it into the constitution and made it a part of the organic law of the State. I hope this information is what you require, and I am glad to have served you."

16,347. What is the case he refers to?—Mr. Eaton, whom I quoted a few moments ago. He says he has heard of a case where a resident in South Carolina has twice resorted to an adjoining State to be divorced and is now living with his third wife within the State of South Carolina. That is a case he does not credit.

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16,348. Then will you proceed with your note?—The procedure in divorce actions varies in the different States. In the majority of them either party in a defended case may demand a jury. In fact, in Georgia, the concurrent verdict of two juries, at different terms of court, is necessary before an absolute divorce can be granted. In a number of the States the petition in undefended cases is referred to a master or referee to hear the evidence, and upon his report the court enters the decree. In such cases there is little likelihood of publicity. Divorce is now so common that publication of the proceedings is sought by the newspapers only in sensational cases, or where the parties are prominently before the public.

16,349. I think that almost ends your statement as to the state of things?—Yes.

16,350. And now you proceed with what is very important. What has happened there and your own view of the matter?—The increasing number of divorces in the United States has aroused a general public interest in that country which has resulted in a widespread movement for their reduction. The Governor of Pennsylvania, by the authority of its legislature, requested the co-operation of other States in assembling a congress of delegates to consider the laws and decisions of the several States, with a view of drafting a general law to secure uniform statutes upon the subject. The congress was held in Washington, in February 1906, and was composed of official representatives from 41 States. Among the delegates were leading members of the judiciary and bar, Church dignitaries, governors, United States senators and representatives and several women. After an extended discussion certain principles were agreed upon, and these were embodied in a draft Act which was adopted at an adjourned meeting of the congress in November 1906. This Act, which has already been adopted as the statutory law of three States, viz., New Jersey, Delaware and Wisconsin, may, therefore, be taken as the considered opinion of the leading American jurists and publicists, as well also as the representative expression of the American Bar Association of the State Commissioners on Uniform Law and of the Inter-Church Conference.

16,351. Do you know if that is a law that is set out in that census book?—I can tell you in a moment; I have not looked to see.

(Mr. Brierley.) Yes, I think so.

(Chairman.) I looked at it carefully some time ago. I think that must be the case.

(Mr. Brierley.) Yes, the six grounds are the same.

(Witness.) I have a copy of it here.

16,352. (Chairman.) Do you know what numbers of people attended that congress?—I think there were two representatives from each of the States, and there were 41 States represented, so that there would be 82 delegates.

16,353. Do you know how many of those were of the bench and bar and how many of the Church?—I did not analyse them.

16,354. Does it appear anywhere?—I do not think it does; but with respect to those persons, I think I used the language of the address of the President which I have here and would be pleased to place in your hands.

16,355. The President of that conference?—Yes, there is an address that accompanied the presentation of the resolutions, and this address was delivered at a meeting in Philadelphia in December 1906, when this draft law was agreed upon.

16,356. Would it be depriving you of anything you want to keep if we have it?—Not at all. I will give it you with pleasure. Mr. Amasa Eaton sent it to me.

16,357. The account of this is on page 271 of the census book?—Yes, that is it.

16,358. Then, perhaps, you will continue to read your note, as that gives the summary?—It begins at 271 and is on 272. Then, I would say that uniform divorce law as drafted by the congress can be found on page 272 of the first volume.

16,359. Then, when you say that has been already adopted as the law of the States, do you say they passed—?—They passed a fresh statute repealing

former statutes and embodying this particular law as the law in relation to divorce to take the place of the old statute.

16,360. Then perhaps you will continue your proof, as it gives a summary?—This proposed law provides for six grounds for the dissolution of marriage, viz., adultery; bigamy; conviction for crime, followed by a continuous imprisonment for at least two years; extreme cruelty, such as to endanger the life or health of the other party or to render cohabitation unsafe; wilful desertion for two years, and habitual drunkenness for two years. Two years' *bonâ fide* residence in the State is necessary to enable the court to acquire jurisdiction. When the defendant cannot be served personally within the State where the petition is filed, there may be service by publication, supplemented, where possible, by personal service without the State, when the cause alleged is adultery or bigamy or when the cause alleged is recognised as a ground for relief in the jurisdiction in which the petitioner resided at the time when the cause arose. In all undefended actions, and in any other case where the court may deem it necessary or proper, a disinterested attorney may be assigned by the court actively to defend the case. All hearings and trials shall be had before the court in public, and no record or evidence in any case shall be impounded, nor shall access thereto be refused to anyone."

16,361. What do you mean by evidence should be impounded?—It is a common custom, as far as my experience goes, for all records of proceedings pending in the court to be kept by the clerk of the court, and after trial, as well as pending the proceedings, any person on any excuse almost can go to the clerk and see them. That is what is meant by saying they shall be kept accessible to the public.

16,362. But it says shall not be impounded?—Well, it means shall not be shut up. It does not mean impounded in the sense in which the word is used in this country. That is the sense in which it is used. The decree nisi shall become absolute after the expiration of one year, unless the court before that period for sufficient cause shall otherwise decree.

16,363. Then you give your own personal experience?—Yes.

16,364. I forgot to ask you, are you one of the counsel to the Embassy?—I am the senior counsel to the Embassy.

16,365. Then will you give us the result of your experience?—Personally, and as the result of nearly forty years' observation and professional experience of the laws of divorce in the United States, I am of opinion that the frequency of divorce in that country and the growing indifference to the duty and obligation of marriage, are primarily due to the fact that marriage in America is defined by statute to be merely a civil contract, and that no form of solemnizing the ceremony is provided or required. In several of the States the law specifically declares that the parties may marry without the intervention of anyone. All that is required is that they shall make a written declaration setting forth their names, ages, places of residence, and the date, place, and fact of their marital union, and that they shall acknowledge the execution of this document before a notary public and record it in the manner in which a grant or conveyance of land is recorded. Justices of the peace, clerks of courts, police magistrates and the leaders of a multiplicity of sects and of ethical societies, are empowered to perform the rites of marriage. In America, justices of the peace, in the Western States, are commonly the proprietors or keepers of a public house. His court is usually held in an apartment over or adjoining his bar. As the State requires no form of marriage he is left free to exercise his fancy as to the time and manner in which he shall perform the rite. It is no unusual experience for him to repair from his bar to his court to declare, amidst the levity of the loafers and the hangers-on about the premises, that the couple arraigned before him are man and wife. Persons thus married can, naturally, have no comprehension of the solemnity of their engagement. God has not joined them

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together and they are quite willing, if circumstances suggest the desirability of a release from their contract, to invoke the aid of the most convenient and pliable court to put them asunder. Aside from all questions of religious belief, a marriage which has no better sanctity than attends the making of a promissory note, or a bargain for the purchase and sale of produce, cannot, in the very nature of things, be more highly regarded by the majority of thoughtless persons than the obligations of an ordinary commercial transaction. The legislature, without offending the sentiment of the non-religious portion of the community, should be able to raise the dignity of the wedding by restricting the right to perform it to certain officials whose positions command respect and who should be charged with the duty of conforming to a service the object of which should be to impress those seeking to marry with the responsibility which they are about to assume, a responsibility which extends not only to their immediate and future welfare but to their relations to the State and to the children which may be begotten of their union.

16,366. The whole point there is that the marriages are entered into without any solemnization and without any adequate consideration?—Unfortunately, they may be entered into anywhere at any time of the day and night and without any formality.

16,367. You regard it as essential that they should be contracted with a proper solemnity and something to impress on the people the nature of the obligations they are undertaking?—I think it is obviously so. The person who regards marriage lightly must, I think, regard divorce without any terrors.

16,368. Is this illustration you have of the justices of the peace and the bar saloon common all over the States?—No, I think only in the Western States where, my experience was much larger than the east. Justices of the peace are in every State of the United States privileged to marry persons; but a justice of the peace is not a person who occupies the same position as a magistrate does here.

16,369. Can you at all indicate what sort of position he occupies?—It is an elective position, and there is a justice of the peace generally, in the cities, for each ward, or one or more justices of the peace for each county, and they are elected by the people at large. They have civil jurisdiction in very small amounts, and there is an appeal from these justices of the peace, without leave, to the higher courts, where the whole case is heard *de novo*, which shows the disregard the judges have for these justices of the petty courts.

16,370. The gravity of the point has been recognised?—Yes; I may be prejudiced, but my view has been for many years that marriage is altogether too lightly regarded in the States. Most of the American States have set an example to this country by taking steps to provide, to some extent, against improvident marriages. With but very few exceptions the age at which young people may lawfully marry has now been raised from the common law rule of 14 and 12 years to 18 and 16 years. But while a valid marriage may be contracted by a male of 18 years of age and a female of 16 years of age, the consent of parents is necessary to such a union. In some instances it is necessary that both parents should attend before the licensing authority to signify their assent, but more generally it is sufficient if the consent be produced at the time the licence is applied for, or when the marriage ceremony is performed.

16,371. Is that new legislation?—It is quite new. In fact it is only within comparatively the last few years a licence was required before marriage. In certain of the States laws have been passed which require the applicants for a licence to produce the certificate of a medical examiner that the applicants are in a fit and proper physical condition to marry, and if necessary the licensing officer may examine the parties and witnesses called in their behalf. The New Jersey law provides that any person who has been confined in "any public asylum, or institution, as an epileptic, "insane, or feeble-minded patient" shall not marry in that State "without a certificate from two regularly licensed physicians of the State, that he has been

"completely cured of such insanity, epilepsy or feeble-minded condition, and that there is no probability that "such person will transmit any such defects or disabilities to the issue of such marriage." The Michigan Act provides that no person who has been afflicted with certain private diseases, and has not been cured of them shall be capable of contracting a marriage. My experience in America and in England convinces me that the welfare and happiness of society require a middle course between the lax divorce law of America, and the difficulty which attends the obtaining of a decree dissolving marriage in England. There are too many causes for divorce in America, and too few in England. The health of the race, from an eugenic point of view, is imperilled by obliging a woman to continue to live in marital relations with a husband who is a confirmed drunkard, or is subject to recurring attacks of insanity, or who has in him the seeds of an incurable disease. When the strain to which either spouse is subject by the continuous cruelty of the other, has reached the breaking point, it is wise, not only in the interests of the parties themselves, but of the State and—I may add—the Church, and I think that the law should intervene. The causes for which, in my opinion, divorce should be granted are:—Adultery, wilful and perverse desertion, for a term of not less than two years.

16,372. Separate causes?—Yes; adultery is one cause, and wilful and perverse desertion for not less than two years is the second cause; cruelty, to an extent and of a nature that renders life intolerable is the third cause. Habitual drunkenness; insanity, either in an incurable or in a recurring form, and I should add confirmed criminality. I am very loth to open the door as wide as that, but what has moved me to it is—

16,373. Is that the last one you are on?—Yes, confirmed criminality. Adultery, of course, has been recognised by the law, but wilful and perverse desertion, in my opinion, should be made a cause, because the condition of the innocent spouse, in a case of that kind, is of such a nature that, aside from any question of the trouble and anxiety she would have in keeping the home together after her husband had deserted her, is the question of what is to become of both these parties so far as they are exposed to temptation afterwards.

16,374. Do you mean that that desertion should be a cause only after a certain length of time?—Oh, yes, certainly. I have put two years, and I do that because if a judge in his wisdom from the evidence finds there is perverse determined desertion it may exist for only a comparatively short time—say for six months—and yet be such a desertion as would entitle the wife to relief; but that would open the door to the experience of nearly all countries, that where desertion is a cause and has not to be for a certain time it is a means of bringing about collusion and connivance.

16,375. You would put it at such a term as would make a bar to collusion?—Yes, and if necessary, I would say three years. Then as to cruelty, I think a woman—particularly in the poorer classes—should be relieved from a condition of things which makes life impossible with her husband. As to habitual drunkenness and habitual criminality I have reached that conclusion, because I think the State should be considered in every marriage, and the consequences of every marriage, and where a person is an habitual drunkard or liable to recurring attacks of insanity—or is a thoroughly debased criminal—there is a possibility of his habits and traits being handed down to children.

16,376. I should like to ask you, as you have a very large experience, if you think, provided the causes are limited as you suggest, there would be any danger to public morality?—I do not think there would. I cannot conceive of there being any danger of collusion, for instance—which is the most likely thing to affect public morality—I cannot conceive of there being collusion where in cases of desertion the evidence shows that it is perverse desertion—I mean obstinate desertion over a continuous period of time. I can hardly conceive of collusion in a case like that. People who desire to be married generally desire to be married fairly quickly—that is my experience—and they will seek some cause which will release them from their present bonds that

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they may make new bonds of marriage. If you are going to keep them waiting for three or four years, the game is hardly worth the candle for them.

16,377. Then the others—cruelty, insanity, drunkenness and crimes—are not points where there is any chance of collusion?—I do not think there is any likelihood whatever. But taking drunkenness, I ally that with a certain form of cruelty and insanity, and so on, with regard to off-spring; and I think it is the duty of the State from the eugenic point of view to preserve the off-spring. Many a wife would be only too pleased to think her insane husband was cured when he was released temporarily, and when he came home during that interval the seeds of that horrible disease might be communicated to innocent children.

16,378. Your proof continues on that point?—I thought I had finished.

16,379. Not quite?—Our laws have been based upon the presumed welfare of the immediate parties to the marriage, but the State itself and society at large have a deep concern, not only in the permanence of the institution, but in the consequences of it. The proposed uniform law of divorce in the United States has omitted insanity as a ground, but makes conviction for crime a cause. In the case of insanity an affectionate husband or wife might properly and laudably refuse to sever the tie out of a feeling of sympathy for the other, especially if there was ground for hope of ultimate recovery. But the appalling rate of increase of insanity in this country is due to the transmissible nature of the disease, and the State should intervene to encourage, if not to enforce, the dissolution of a marriage which might condemn an innocent person to years of union with a spouse who is living in a condition worse than death, and who, during a temporary recovery, might cause the propagation of children who would be the heirs of his affliction. On the other hand, a person convicted of crime is not necessarily one who may not be forgiven, or resumption of marriage with whom need not entail serious consequences. But it is a different in the case of a confirmed criminal.

16,380. You draw a distinction between cases of confirmed criminals and a man who is convicted of some individual offence?—I do; and I am led to that by the distinction made in the statutes of a number of advanced States in the United States which deal with the question of transmission of blood in the cases of confirmed criminals.

16,381. Have you a definition of that in your mind?—I have it in my mind. I could not quote the words accurately. Several States have been trying to get at this result, but they mention where a person has been convicted, say, three or four times; some States say three—

16,382. Does it correspond with the definition of habitual criminal?—Yes, substantially; and the point I make is this, that a man might temporarily and in the heat of passion do some act which would cause him to be imprisoned for a lengthened period of time, and yet he might never, possibly, recur to that condition if he were liberated. Whereas, if a person continually and deliberately lives by crime and goes from penitentiary to penitentiary, or out of the penitentiary and back to the penitentiary persistently, that is a man who I think should not be permitted to marry and have children.

16,383. Then the next is the question of the equality of the sexes?—Yes; there is no distinction between husband and wife, because I believe the causes upon which that distinction was based no longer exist. The poorer classes should have equal opportunities with the rich for access to the courts for divorce. This is secured to them in America, by giving jurisdiction in divorce to all of the chancery and *nisi prius* courts. These courts are so accessible to all members of society that divorce is made as easy in America as it is difficult and costly in England. In my opinion there is also in respect of this branch of the subject a middle way between the American system, which takes the decree to the door of the remotest litigant, and the English procedure which requires every petitioner in the furthest limits of England to bring his witnesses with him to London before he can

obtain the relief to which he is plainly entitled. Conferring jurisdiction in divorce upon county court judges would, in my opinion, tend to make divorce almost as facile in this country as it is in America. But there would be no hardship in requiring a petitioner to bring his or her witnesses to the nearest assize town. If, as is probable, the circuit system is doomed, it will be succeeded by courts in certain localities, presided over by High Court judges sitting for a fixed length of time. If these judges are given jurisdiction in divorce they should not find their other civil duties unduly interfered with.

16,384. That last point means the High Court judges?—I should not certainly extend it beyond the jurisdiction of a High Court judge. I should have some hesitation in conferring jurisdiction upon High Court judges on circuit, but it is the lesser of the two evils. The present system of bringing a wife, with three or four witnesses, from Northumberland or Westmoreland to London to prove what is a clear case against a husband, perhaps having to wait here over a week-end, and, in that way, to run up an unconscionable expense—

16,385. You would prefer, in that case, to see it taken to a near town and minimise thus the expense?—Yes.

16,386. But still preserving the highest tribunal?—Yes, that is my idea.

16,387. Is there anything else you want to add?—No, I have nothing else. I am afraid I have detained you too long.

(Chairman.) No, it is an admirable proof, and it must have given you an immense amount of trouble to prepare.

16,388. (Mr. Brierley.) I should just like to ask you a few questions with regard to lunacy being a ground for divorce. I understand this proposed Uniform Divorce Law you have mentioned was the result of a long-continued discussion throughout the United States, and also the result of four days' debate in the Congress?—Yes.

16,389. Now they seem to have recommended, as you have mentioned, six grounds for divorce, but they did not enumerate lunacy as a ground?—Yes.

16,390. And also, as you have not mentioned, they recommended seven grounds for judicial separation, in which they did recommend the hopeless insanity of the husband as a ground?—Yes.

16,391. Could you give me any idea what the reasons were for that recommendation?—I wrote to Mr. Amasa Eaton about it.

16,392. First, with regard to lunacy not being a ground for divorce, and then with regard to hopeless insanity being a ground of separation, but only on the petition of the wife?—I saw it was omitted from divorce—that ground of insanity—and I wrote to Mr. Amasa Eaton, who has taken much interest in this question of uniform law, and I asked him, and he writes me something that I do not understand. He says: "Hopeless insanity we learned from medical experts in the female is often the result of childbirth. Certainly, a psychological and physical result of intercourse, caused by the act of the husband, should not be used by him as a cause for divorce." That to me is not conclusive, but still—

16,393. That is the ground?—Oh, wait one moment, I have not read the whole of it. "But it seems proper that hopeless insanity should be a cause for divorce *a mensa*, for in such a case procreation should cease."

16,394. Of course, they have only made it a cause for divorce *a mensa* on the petition of the wife, but not in the converse case?—Yes, it is incomprehensible, and I wrote for an explanation, and his reply was almost as incomprehensible.

16,395. However, that was a recommendation of the Congress?—Yes.

16,396. You say the proposed divorce law has been adopted by three States, in which you mention New Jersey. Are you quite clear about that? If you will refer to the bureau statistics you have in front of you, you will find in 1907, one year after the meeting of the Congress, that New Jersey did pass a divorce law, but

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that they confined the grounds of divorce, not to six, but to only two, namely, adultery and malicious desertion?—Yes.

16,397. They declined, apparently, to have anything to do with the other four grounds recommended?—Mr. Amasa Eaton told me that the three States which had acceded to the wish of the Convention—

16,398. I am afraid I cannot refer to the actual page?—It is easily turned up here.

16,399. I think you will find it to be so; and that, with regard to judicial separation, they confine it to three grounds, of which hopeless insanity of the husband was not one?—It is on page 307, if you have one of these volumes before you.

16,400. I am afraid I have not?—I think that answers your questions. The laws which are compared here from the various States, give the laws of New Jersey on page 307, and the authorities for this revision of the laws are in 1877, 1886, 1887, 1889, 1890, 1891, 1900, 1902, 1903, and 1905.

16,401. I want the law of 1907?—It is not in this book.

16,402. If you would pardon me?—Well, will you look. (*Handing a book.*)

16,403. Might I refer you to page 274. It says this: "The Legislature of New Jersey at its regular session in 1907, passed an Act which was approved May 17th, 1907, conforming very closely to the form of statute adopted by the Congress on uniformity of divorce laws," and so on. Then, if you go on to the causes for divorce, the next column, towards the top: "(II.) Causes for divorce." (2) Divorce from the bond of matrimony may be decreed for the following causes:— (I.) Adultery by either of the parties; (II.) wilful, continued, and obstinate desertion for the term of two years. (3) Divorce from bed and board may be decreed for (I.) Adultery by either of the parties; (II.) wilful, continued, and obstinate desertion for the term of two years; (III.) extreme cruelty in either of the parties," and that is all. So, just the year after the meeting of the Congress, and their recommendations, the State of New Jersey seems to have rejected four of the proposed grounds of divorce and also four of the proposed grounds of divorce *a mensa*?—I cannot reconcile that with this statement.

16,404. And they seem to have rejected the idea of judicial separation on the ground of hopeless insanity of the husband?—I cannot reconcile that with the statement Mr. Eaton has made.

16,405. That is what I find a difficulty in doing?—Yes.

16,406. And I want to know if you know the reasons of the action of the State of New Jersey?—Unfortunately I do not.

16,407. Because it is of some importance that almost directly after that Congress they declined to adopt its recommendation in some very material particulars?—I cannot help you as to it.

16,408. Then another matter, with regard to this insanity point. The State of North Dakota (I do not know whether you are acquainted with this) in 1899 decreed incurable insanity for two years to be a ground for divorce. In 1901 they repealed that, and incurable insanity is no longer a ground of divorce. Could you give me at all the reasons why, after two years' experience of that Act, they repealed it?—I have seen no reference to it. I take your fact.

16,409. I have no knowledge whatever except what I have derived—and that is not a very great deal—from the census?—I take your fact.

(*Chairman.*) It is page 312.

(*Witness.*) Yes, it would be in the Dakota statute. You asked if I could give any reason why that was done, and I say no. I have seen nothing about it. Such debates, if there was a debate, are not accessible here.

16,410. And in the same way the State of Arkansas repealed insanity as a ground in 1905. It was a ground until 1905, then they repealed it?—I do not understand why they did it.

16,411. You did say that there were nine States in the Union which made insanity a ground for divorce. I am sorry, I have only been able to discover five?—I took nine from here—out of the statistics here. The

statistics I have given you are compiled, I think, very accurately here. And there are cross references to them.

(*The Archbishop of York.*) I was under the impression there were only five.

16,412. (*Mr. Brierley.*) And I will give you the names: Idaho, Indian territory, Pennsylvania, Utah and Washington; and there are two States, Arkansas and North Dakota, which appear formerly to have included insanity as a ground for divorce, but have in comparatively recent years repealed that provision?—Well, if you ask me why, I could not say.

(*Chairman.*) I make eight on page 268, and a lot of them are put down under the head of annulment. They treat it as annulment.

(*Mr. Brierley.*) That would be insanity at the time of marriage, would it not?

(*Chairman.*) I do not know; it is not quite clear.

(*Witness.*) It is very possible that I have found some other State—

16,413. (*Mr. Brierley.*) I do not make a point of that, but take it as a whole in the United States, judging from the action of the legislature of New Jersey in 1907, at all events, and also from the recommendations of the Congress, it would appear that opinion is not in favour of lunacy being a ground for divorce?—I think that is so, and I was so surprised that I wrote, as I told you, to ascertain why it had been exempted, because it seemed to me in my judgment that it should be a ground. I only give you my opinion.

16,414. I do not undervalue your opinion, but I only wanted to arrive at what the general opinion of the United States was on this matter?—It is very difficult to determine that. I may also say, in compiling these statistics, I have given a little later than this book in some instances and gone to the statutes, where I could get to them, and I have also gone to the President of the American Bar Association where he makes a summary, and it may be from that summary I got this figure of mine.

(*Chairman.*) Possibly those you refer to were incapacity to contract.

(*Mr. Brierley.*) Yes, I rather think so.

16,415. (*Sir Lewis Dibdin.*) Following up the point Mr. Brierley has put to you, I think the model law for divorce was accompanied, was it not, by certain resolutions which paved the way to that law?—Yes.

16,416. And it is a fact, is it not, that among those resolutions—you will find it on page 18 of the book before you—under causes for legal separation or divorce, clause 8, there is a resolution about it: "A decree shall not be granted a *vinculo matrimonii* for insanity arising after marriage"?—Yes, that is the resolution.

16,417. That rather completes what has been said?—Yes; and I think it goes to establish the fact that this Congress thought insanity should not be a cause. I do. I disagree with them.

16,418. I only put that to you to complete the story, as it were?—Yes.

16,419. Now, while we are on that, you were asked as to the constitution of the Congress?—Yes.

16,420. Is it not a fact that the resolutions and the draft Bill were drawn up by a large and very influential committee?—Yes, that is true.

16,421. The names of which I think you will find on page 14 of the draft law and its accompaniments?—Yes.

16,422. Now with those names before you, there are 23 in all?—Yes.

16,423. And of those there are only three, I think, who are not laymen?—Yes.

16,424. Does your knowledge enable you to say whether the gentlemen who appear to have been clergymen, Dean Hufcutt, the Right Rev. John Shanley, and the Right Rev. Thomas F. Gailor?—They are clergymen, I think.

16,425. Episcopalian clergymen?—I think so. I can ascertain that.

16,426. There are some Wesleyan bishops, are there not?—There are some, yes.

16,427. But you think those are Episcopalians?—Yes.

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16,428. I may take it, may I not, that those 23 names represent authoritative names on that subject?—Yes, they were a committee appointed by this Convention as to which the Chairman asked me what numbers they were composed of, and I said that I thought two from each one of the 46 States making 82 delegates; there may have been more; I do not know. Then this sub-committee drafted these resolutions, and I take it they drafted the Act itself.

16,429. They say so. They say: "The Committee on resolutions appointed at the divorce Congress respectfully submit by its direction this address on behalf of the Congress with copies of its resolutions of the Uniform Divorce Law and of the laws relating to the collection of statistics of marriage and of divorce"—I am confirmed in the belief that these three men were members of the Protestant Episcopal Church or were Roman Catholic clergymen, because the others are rarely spoken of as "Right Reverend."

16,430. But the resolution and the draft Bill were prepared by this committee which was appointed by the Congress itself?—Yes.

16,431. You have considered this matter a great deal and particularly the very important aspect of it as to what effect enlarging the divorce law will have on general morality in the State, and you have said that the only way in which you think the enlargement you propose in England would be prejudicial to public morals would be in assisting collusion?—I think so.

16,432. But is not there another aspect of it, looking not at the particular people at all. Is it not conceivable that there would be a danger of a general loosening of the idea of marriage as a permanent lifelong bond—a loosening that would arise from the fact of the enlargement of causes on which it could be terminated?—Yes, and no. Yes in this sense, that there would probably be in the minds of some persons a cheapening effect upon marriage if they calculated that in the act of marriage, or in the contracting of a union, there would be possibly some way out of it. Yes to that. But it is hardly conceivable to me that any people who enter upon so solemn a thing as marriage—if it is regarded as a solemn institution—should contemplate, for instance, such a thing as insanity on the part of the other; should contemplate wilful, perverse, and, to use the expression that our friend from South Africa has used, malicious desertion. Those things are not contemplated. The causes generally that I speak of are not contemplated any more than adultery is.

16,433. Would you say the same with regard to desertion?—I think I should say so. I doubt if two people who enter upon the marriage relation would do it in a calculating way and say, "I will go into this thing, and I can get out of it because there is a possibility or probability or a chance of the other spouse deserting me, and I can get free in that way." It seems to me a far-removed contingency to base a calculation on.

16,434. But I think you told me in the first part of your answer that that idea would have a certain amount of influence?—I say it might have. I said yes, possibly. It might have. I am willing to admit it might.

16,435. Do not you think that in itself would be a bad thing for the nation as a whole—that loosening of the idea that a man and his wife come together for better or for worse in its very largest sense?—It would be a bad thing, but it is the lesser of the two evils. The other evil being a compulsory union between spouses who ought to be free, in my opinion, in case of the causes I have mentioned. That is the greater good that I think would come from divorce being extended. But I ought to say this (I say it with great reluctance) that the increase of divorces in America, in my opinion, is largely due, not only to the lightness and frivolity with which marriage itself is regarded—I mean the contracting of the marriage—but also the lightness and frivolity and indifference with which many courts—though there are some estimable courts which are of as high a standard as courts in England—regard it. If the ideal court could have such a judge as, if I may say so, we have had here —

16,436. You say you think the number of courts exercising jurisdiction is large?—About a thousand—enormous. That is a conservative estimate.

16,437. I do not know if you would agree with what Mr. Dike says, that 2,700 courts in the States have divorce jurisdiction?—Well, I say I have made a very conservative estimate. I spent hours in trying to arrive at the number, and I was appalled by the number, and I divided that by two so as to make a conservative statement in the figures I present. So I put in a very conservative estimate and said 1,000 would have divorce jurisdiction. I should not be surprised to hear it is 3,000.

16,438. Mr. Dike may be right then?—I am afraid he is.

16,439. Have you any personal knowledge of the divorce laws of South Carolina?—None at all. Where there are 46 States having their own statutes it is physically and mentally impossible to have a comprehension of all the laws and the reasons of all the laws in all the States.

(*Lady Frances Balfour.*) At this congress at Washington you say several women were there. Were they there as delegates, because it is suggested that, as there were only three clergymen, all the rest were laymen.

(*Sir Lewis Dibdin.*) But may I say I did not lay a stress on "men"?

(*Witness.*) I think there were several women delegates who sat in the conference and whose voice and influence were heard and felt, but when it came to appointing a sub-committee to draft a resolution and the Act women do not figure.

16,440. (*Lady Frances Balfour.*) The women were left out, as is not uncommonly the case. May I ask about this. In speaking about South Carolina you say there were twice as many granted to the wife as to the husband—"In general white women in the Northern States have a greater degree of economic independence than white women in the south. They have more opportunities to obtain employment and are more accustomed to the idea of earning their own living." Do you believe that their independence makes them more favourable to divorce; because our experience here, I think, is rather the reverse?—I quoted that opinion, which I concur in, from the compilers of these statistics. I think you will find almost the language I have used in this volume here; but I thoroughly concur in that opinion. Where you find women who have the capacity to earn their own living and provide for their children, they are much more likely, if their marital relations are unhappy, to go for a divorce than if they had not those means.

16,441. That is to say, if they are subject to great brutality they are not bound to stay with their husbands?—I do not think they would stop at brutality. I think if caprice, or if a desire to get free from their marriage got hold of them they would think they had an opportunity of doing it, considering their capacity to earn their own living.

16,442. Is there not a large Roman Catholic population in South Carolina?—Yes, I should say possibly, but the Methodists, the preponderance of the influential population is either Roman Catholic or Protestant Episcopalian.

16,443. That may account for the condition of the law of divorce in that State, might it not?—I cannot tell you what the history of the condition of affairs is in South Carolina, but I should think it very likely that is the reason why there was no divorce originally in South Carolina. Then I think the people of the State are rather proud people, and they enjoy their unique position, and it would be very difficult to change them. They are very conservative in their views on that subject.

16,444. (*The Archbishop of York.*) You pointed out the great increase in divorce in the United States that there had been on the ground of desertion. It would not be fair, I suppose, to say that the number of divorces for adultery has grown less though the proportion of divorces for desertion has grown much greater?—What I meant to convey by that, and what I think is the fact, is that where as a matter of fact adultery exists, where a wife has misconducted herself,

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the husband for the sake of her family and of his own pride and the reputation of his children would agree with her or her friends that he would bring his petition based on the ground of desertion; and she acquiesces in that very gladly, and that is ascribed to desertion when in fact it should be adultery.

16,445. Then the result would be in the United States that there are a large number of persons who have really been guilty of adultery but who socially are only divorced on the ground of desertion?—I think that is true. I do not think there is any greater immorality amongst married people in America than there is in England, for instance. I think people generally are more observant of propriety, but when such cases of adultery do occur, and they do, for the reasons I have mentioned, the petitioner, finding he can get his divorce on some easy ground, ascribes that as the basis of his petition.

16,446. Then the general loosening of marriage ties and obligations, in the sense of the obligations of marriage of which you were speaking, which led to the Congress and all the efforts that have been made, has been due, not so much to what is ordinarily known as sexual immorality as to the other causes?—Quite so. I do not think sexual immorality prevails to any large extent in America.

16,447. So it is through the provision as grounds of divorce of a large number of other cases that that widespread shaking of family life is due?—Quite so.

16,448. With regard to the interesting point of the refusal of permission to the guilty parties to re-marry. Is it not the case that there has been an increase rather than a decrease of legislation on the part of the States to prevent that re-marriage?—That is true. Of course, it might be provided for if the legislature would follow the example of the English law, and if a decree nisi were followed by a decree absolute, but it has been the custom in most States to have a decree absolute followed with some prohibition in the nature of a penalty to prevent the guilty party re-marrying; and, as I explained, that is ineffective, as the parties go into another State and marry, and then resume their life in the State where they were, but now you are right in saying there is a growing feeling that they should not re-marry, and that is being provided for in a number of States, notably in Delaware, where they are providing that there should be a decree nisi and then a decree absolute after.

16,449. May I say that 10 States before 1888 had some restriction, and no less than 17 since then have made some restriction as to the immediate re-marriage of divorced persons?—I quite agree. I should have thought the proportion was even higher.

16,450. Could you say what reason led these States to increase the stringency of this prohibition of re-marriage?—It arises from the fact that there is this general feeling throughout the United States that divorce is becoming too frequent and too easy, and that if some restriction is placed on the freedom of the parties after divorce the parties will not be so apt to seek divorce. That is at the basis of it.

16,451. It bears out what you say that if people want to marry somebody else they want to do it at once?—Yes.

16,452. And if a bar of some years is thrown in their way they would not be so anxious?—Yes.

16,453. I suppose in some of the States this prohibition of re-marriage is left to the discretion of the judge?—Yes.

16,454. Does that operate at all?—I do not think so. The judge may, in case his sense of propriety is shocked, decree that the guilty respondent may not marry; but, as I said before, that was absolutely ineffective. The only way to do it is to enter a decree nisi, followed by a decree absolute.

16,455. Can you say how far in your judgment this tendency of State law to put a bar in the way of the immediate re-marriage, at all events, of parties has been successful in dealing with the evils?—I do not think it has been at all successful in dealing with the evils for the reasons I have mentioned, but I think there is a growing feeling throughout the United States that some impediment should be made to the

tide of divorce. For example, until within a few years past there have been several States where residence of only six months was required for the court to obtain jurisdiction over the petitioner; and now laws exist in only two States to that effect.

16,456. Would it be your opinion that in a country where there was not this conflict of jurisdiction and laws, a bar put in the way would promote morality?—I think so.

16,457. As to the two guilty parties, I mean?—Yes, I understood what you meant.

16,458. With regard to the question of Carolina, I am so ignorant of the state of things that I may be asking a question which would shock the citizens of South Carolina; but with regard to this concubinage which is spoken of as being very prevalent, how far would that be referable, if at all, to the relation between white and black people?—Oh, not at all. I doubt if there exists any such relationship in the State of South Carolina. It would be impossible for the person to maintain that relation and hold any position whatever, even in the lower walks of society—any position of respect.

16,459. With regard to this model law that has been drawn up, I suppose we may take it that the importance of it is the question of uniformity. I mean we should not be right in regarding uniform law as representing the opinion on divorce of everybody on the Congress?—No.

16,460. It is rather a question of compromise to arrive at uniformity?—Unquestionably, I think. It arose from the common custom of people to leave a State to obtain a divorce in another State where divorce was facile, and there obtain the sanction of the courts to a dissolution of their marriage. Now this uniform law would prevent that, and you will see that it provides that there should be no order on a respondent or defendant out of the jurisdiction unless he resides in a State where causes of divorce are the same as in the State where the person resides.

16,461. Would you agree we should be unwarranted in drawing the inference that all the persons who composed that conference themselves thought that all the six causes were legitimate causes of divorce?—Oh, I think so, just as I do myself. I am appalled at the idea of divorce itself, but many of them have reached the conclusion that I have reached that there must be some compromise with one's conscience almost on this subject.

16,462. I mean it would not be fair to appeal to the Congress and say that in the opinion of all its members cruelty and habitual drunkenness was a proper cause for divorce?—I quite agree that it was a compromise report.

16,463. But that for the sake of uniformity there ought to be some general law?—I quite agree.

16,464. With regard to what you said as to the importance of the ceremony of marriage, is it not the case that there is a model law of Columbia which provides that every marriage licence should be directed to some particular minister who alone can celebrate the marriage. Is that the kind of thing?—Yes, but even under that law if there was a constituted religious society which had an acknowledged head, that individual would be called a minister, and it would be difficult to challenge his position as such. If he were the president of an ethical society, or a preacher, as they call it, in a negro Baptist Church, he would be a recognised head of that religious community, and would be entitled to call himself a minister, and to him would be directed that licence and he might have no idea of the ceremony he ought to perform.

16,465. Do you think there ought to be some civil ceremony, or do you contemplate only a religious ceremony?—If I had my choice, I should make it a purely religious ceremony; but that would be impossible in a large portion of the United States where there is no recognition of any particular form of religion, and where the statutes provide that marriage is simply a civil contract.

16,466. Do you think it important that even in a registry office in this country where it is a civil contract, there should be some solemn form reminding

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[Continued.]

them of the solemn nature of the ceremony they were going through?—Yes. The first time I saw a marriage in a registry office (and I have seen a good many since), I was struck with the fact that there was some dignity in the contract ceremony; but I should elaborate that with the idea of impressing the people that they were doing something of great solemnity and consequence.

16,467. Would your form include the words, "for better or for worse and for life"?—Certainly.

16,468. With regard to these causes of divorce you have enumerated, I find it difficult to get at any principle underlying the enumeration. Is it your view that marriage is merely a civil contract?—I believe it is a religious ordinance and is a sacrament, myself. That is my view of it.

16,469. Is it so intrinsically, or only so in the judgment of the parties contracting it?—It is so intrinsically.

16,470. Then if it is so intrinsically?—I know where you are driving me.

16,471. If that is the principle underlying marriage, is it not difficult to justify divorce for such causes as desertion?—I quite agree it is, but one must make some compromise somewhere for the good of society.

16,472. Then you are the more disposed to make a compromise of principle because of your familiarity with the state of things in the United States?—That is what has driven me to that conclusion.

16,473. But would you be so clear about that in the happy condition of things that exists in England?—I would go so far as to say that there should be some compromise here which would give—strongly as I feel the religious aspect of marriage—some relief on account of two things: some relief where the conduct of one of the spouses has rendered the marital relations impossible; and, secondly, where the nature of that conduct is such that it is going to afflict innocent parties or may tend to inflict its consequences on innocent persons.

16,474. Keep that point first. A great deal of what you said, is applicable to the whole principle of the State having the right to prevent marriage—the eugenic side of what you said?—Yes.

16,475. In the United States many of the States, you said, have passed stringent laws against the marriage of persons who are first cousins even, or who were insane, epileptic or diseased, or afflicted with certain sexual diseases?—Yes.

16,476. That is one principle, and that the State should prevent marriage; but is it not bringing that principle into the side door to say that the State should compel divorce in the case of persons who in the course of their married life have come to have these distresses or diseases?—Well, it seems to me, looking at it from the point of view of the State, as a logical conclusion.

16,477. I wanted to be clear what you meant. You say it is highly detrimental to the State that a person who was of confirmed criminality should be allowed to resume his home life. Do you mean that the State should compel a wife to divorce a criminal?—I see no way by which it could practically be done, but certainly by providing that a wife should have a divorce in circumstances of that kind, you come very closely to what really you have put to me of the State compelling a divorce in a case of that kind. It is the next thing to it. I should not say for a moment that the State in some form of parental government should point out certain individuals and say: "Now in my judgment you should not have children, and therefore you cannot have union with a wife, and I will divorce you." I cannot imagine a State doing an arbitrary act of that kind, but I think in the interests of society, where the man is constantly guilty of criminal acts, and is a confirmed criminal—I think in the interests of the State, as well as of the wife herself, a woman should be divorced from that man.

16,478. Then you would forbid that man to marry anybody else?—I should not say so, because it would be impracticable to carry it out. It is an academic question that I should rather not answer.

16,479. Then it is rather that in certain cases where certain particular distresses have come into married

life that the State should say: "We will allow you divorce because there is a chance that you might have progeny that would be unhealthy"?—I think that is a factor that should be considered in forming a law.

16,480. If consistent, you should say that the State should forbid the person marrying anyone else?—Then I am afraid from the impracticability of the thing I should have to be inconsistent.

16,481. One other question: in the United States are there any penalties of any kind attached to ministers of religion for declining to celebrate marriages?—None that I have heard of.

16,482. In the United States every clergyman is free to celebrate a marriage, or not, according to his conscientious convictions?—Yes. Well his conscientious convictions and any wish of his superior, I should say, or any rule that a bishop might make in his diocese.

16,483. Is not there a very great effort in America between the religious bodies to help one another to prevent the celebration of undesirable marriages?—I think there is—only amongst Episcopalian clergy. I do not think in any—

16,484. Have you heard of an important Inter-Church Conference that was held?—Yes.

16,485. I think that was appointed by delegates from the Protestant Episcopal Church; the Presbyterian Church; the Methodist Episcopal Church; the Methodist Episcopal Church (South); the Alliance of the Reformed Churches holding the Presbyterian System; the Synod of Evangelical Lutheran Church; the General Synod of the Reformed Church in America; the Baptist Churches; the Congregational Churches; the Universalist Churches; the Reformed Presbyterian Church, and the Cumberland Presbyterian Church?—Yes.

16,486. They all met?—Yes.

16,487. And they agreed: "It is desirable, and would tend to the increase of a spirit of Christian unity, for each Church represented in the conference to advise and, if ecclesiastical authority will allow, to enjoin its ministers to refuse to unite in marriage any person or persons whose marriage, such ministers have good reason to believe, is forbidden by the laws of the Church in which either party seeking to be married holds membership"?—Yes, I remember to have seen that. I remember reading the address.

16,488. You will agree that that element represents not the Episcopal Church only, but all Christian bodies?—All Christian bodies whose laws have the requirements in them which you quoted a moment ago.

16,489. So that there is a very general desire on the part of the religious bodies to maintain the highest standard of discipline amongst their own members?—Yes.

16,490. And by comity with one another to make that effective?—I quite agree that is so.

16,491. (Mr. Burt.) Can you say if there is any great difference between one State and another as regards the number or proportion of divorce?—Oh, yes.

16,492. For instance, you stated that in the State of New York, where adultery alone is the cause of divorce, there are only 23 divorces in 100,000; whereas in the State of Washington there are 11 different causes, and the proportion rises to 185?—Yes.

16,493. Depending largely, I suppose, on the number of causes or grounds of divorce?—I think almost entirely so.

16,494. Is it quite common for persons to go from one State to another where there are greater facilities for divorce, in order to secure divorce?—It was a common custom up to, say, six or eight years ago, but it is growing less and less. We had a very well-known case, the case of Haddock against Haddock, which put a stop to that to a considerable extent.

16,495. Then I understand there is an effort being made now to get a general law giving uniformity throughout the States?—Yes.

16,496. And some of the States have adopted it?—Some of the States have adopted it. I thought three of them had done so, but I may be in error. I was informed three of the States had.

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[Continued.]

16,497. Then each State would have to do it for itself?—Independently of the others.

16,498. With regard to the justices of the peace, you mentioned that they are elected?—Yes.

16,499. Are they elected by a popular vote?—Yes.

16,500. Have all of them jurisdiction in divorce cases?—Oh, no; none have jurisdiction in divorce cases.

16,501. In separation cases?—No, no jurisdiction at all in those matters. They only have the right to marry people, which is the commencement of the mischief.

16,502. When they are elected, are they elected temporarily, or for life?—Oh, no, they are elected for a term of years; anywhere from two to four or six years, according to the particular State in which the election is held.

16,503. (*Sir William Anson.*) I think I understood you to say that the prevalence of divorces in the United States does not indicate any greater laxity in the state of morality than in this country?—I do not think it does.

16,504. But it is due partly to the liberty with which people regard marriage, and the undue facilities with which judges treat it?—That is my view.

16,505. Then the great number of undefended cases; does that point to collusion?—I am reluctantly obliged to say yes. I think there is very generally in undefended cases either indifference or collusion.

16,506. Is there any machinery in any of the States' courts corresponding to the King's Proctor, where collusion is suspected?—No, there is no official charged with that duty, but in certain States the petitioner for divorce must serve his petition on the representative of the court in that particular jurisdiction—for instance, the prosecuting attorney, or district attorney, or whatever he may be called—and he has the right to be present at the trial and to intervene. But most of the statutes, as far as I am able to read them, are as I have stated, statutes which are more particularly provided as the means of defence in the interests of the parties than in the interests of the community at large. Unfortunately, a judge himself very rarely does what is so constantly done in undefended cases here, examines a witness, and sometimes very searchingly.

16,507. I suppose that comes from the fact that this frequency of divorce and the number of grounds of divorce have given rise to a feeling on the part of the judges that if the parties do not get on, they may as well be separated?—I think that is the general thing.

16,508. Therefore, collusion is not an offence to their mind?—Not the slightest.

16,509. Or a bar to the decree of divorce?—I think that is quite true.

16,510. I should like to ask you one or two questions about the grounds of divorce of an explanatory sort. In the list of grounds of divorce granted between 1887 and 1906 there is voluntary separation as well as incompatibility and ungovernable temper?—I do not know such a ground as that—voluntary separation.

16,511. It is in that table. I made a note of several of the grounds, and have noted incompatibility of temper, ungovernable temper, and voluntary separation?—Not incompatibility. Ungovernable temper is a ground, but I do not know any State where voluntary separation is a ground.

16,512. (*Chairman.*) Perhaps I may help Sir William here. I have the table before me—page 268. Voluntary separation is put down amongst several others under the heading of other causes, and then there is Rhode Island, and then the figure 8 against it, and a footnote, "Living separate and apart for the space of at least 10 years." One would have to see if that voluntary separation did not mean separation for a number of years through any cause?—Yes.

16,513. (*Sir William Anson.*) Then, as it indicates, that would come very near to cruelty, would it not?—I suppose it would by a careful judge be regarded as cruelty almost.

16,514. Then neglect of duty?—That means neglect of duty to provide maintenance.

16,515. No, there is neglect of duty and neglect to provide. I wanted to know whether neglect of duty might not also come under the head of cruelty?—I should assume it would.

16,516. But can you refer me to any State? I am afraid I only noted the different grounds.

(*Chairman.*) I see neglect of duty at North Dakota, and South Dakota—

(*Witness.*) I see it here. Ohio seems to have it.

16,516a. (*Sir William Anson.*) It is connected with drunkenness and desertion, but it appears by itself?—I think that is an abbreviated form to get it in the table, but I do not think it is intended to be neglect of duty without defining it.

16,517. I have neglect of duty, 5,863 granted to the husband, and 17 thousand odd to the wife; neglect to provide, 6 to the husband, and 34,600 odd to the wife. So I was anxious to know what the distinction was?—I am afraid I cannot tell you.

16,518. The point of my question is this. If you make cruelty rendering life intolerable a ground for divorce it becomes rather difficult to define that precisely, and a great many of these cases might run into cruelty in rendering life intolerable?—I agree; and for that reason I would not have jurisdiction here conferred on county court judges.

16,519. Yes; if you have the jurisdiction assigned to a number of judges you may come to the judges granting it simply because they thought the marriage was a failure?—Yes.

16,520. The case of *Haddock v. Haddock* has had a real effect?—Oh, a very decided effect.

16,521. (*Chairman.*) What is that case?—A case in the Supreme Court in the United States.

16,522. (*Sir William Anson.*) It was that the full faith and credit clause did not apply in a case like that?—Yes.

16,523. (*Sir George White.*) You expressed to us your conviction that the enormous difference between the number of cases in New York State and Washington depends almost entirely on the extending of causes of divorce?—I think so.

16,524. Is there nothing to be accounted for in the difference of the population and the habits of these two States?—They may possibly be a factor, for Washington is a comparatively new State, and a man may desert his wife in the Eastern States and go out to make his living in Washington, and, after acquiring a residence there, go and get a divorce; but he would not do so, I think, unless he could easily find some cause that would cover his requirements.

16,525. But I may assume that New York State would contain a good many more foreigners than Washington?—I can only state my opinion, and I do not think the foreigners frequent the divorce court as might be supposed, and in Washington there is a large mixed population.

16,526. You said you wished the extension of divorce in England because of the condition of the United States. You have had a good experience of England, and I suppose that has enabled you to form your opinion as well as your experience in America?—Yes; I think I told his Grace that why I formed my views is because of my experience in England as well as in America.

16,527. And you said all the people attending this Congress would probably not agree to all the causes given. In your proof you say after an extended discussion certain resolutions were agreed there. Then the draft Act was the result of the deliberation of that Congress in the same way as other opinions are formed without every individual agreeing to every individual item; it was the general consensus of opinion?—Yes, I am sure there were many men in that Congress who would not have had divorce under any circumstances, but were impelled to believe it was necessary that there should be divorce because the community at large demanded it; and therefore they turned their efforts towards finding some common basis on which they could agree, and I think it was a compromise verdict in that sense.

16,528. And you answered Sir Lewis Dibdin that it might be to a certain extent that the extending of

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[Continued.]

grounds for divorce might have some loosening effect on the marriage tie; but is it not possible, in your judgment, that on the other hand there might be a great sense of injustice on the part of certain people who were incapacitated from living in the marriage relationship because the other spouse is permanently insane or otherwise permanently separated, and that that sense of injustice may weaken their morality and drive them into an unfortunate relationship?—I think that is just as fair a conclusion as the other. I think it is very likely that that would be the result.

16,529. One other question with regard to the High Court. I take it you are distinctly against county courts having jurisdiction in divorce. Is it your view that these divorce cases should be brought before the High Court at assize or would you favour the idea of High Court judges holding special courts at convenient and somewhat frequent times throughout the country?—I think it depends entirely on what the present condition of the assize work is. In my opinion (and I cannot speak with much authority) the assize courts at the present time would have an opportunity of discharging all the business that would come to them in the way of divorce at present, but I am of opinion, as almost every person in our profession is, that the assize system is pretty well at its end, and that it will be succeeded by certain High Court judges sitting in certain localities for a specified length of time as is being done now in Manchester and Liverpool. I think it would be comparatively convenient to bring these witnesses to those courts to obtain relief which they cannot get now, having to bring their witnesses to London.

16,530. Would you be in favour of having costs so reduced by some practice as would bring these facilities within reach of the very poorest classes who need them?—Personally, yes; I do not think the costs ought to be as high as they are now.

16,531. One other question with regard to the Congress. I gather that in your opinion a great many of the evils of the United States come from the very loose way in which the marriage contract is performed?—That is my opinion.

16,532. There was nothing that transpired at the Congress with regard to the better form of these contracts?—I do not think that they discussed the question of marriage.

16,533. Not at all?—I do not think so. Not that I have seen in any of the literature I had on the subject.

16,534. (Chairman.) Just two or three questions that have been suggested by what has been put to you. In answer to Sir George White you mentioned the dangers that occur when parties are separated. Have you found that there are a great number of cases where a husband or wife disappears to the colonies or America and sets up another establishment?—Yes, a large number of cases of that kind have come within my own experience.

16,535. You have met with cases in the courts here?—Yes.

16,536. The persons are dissatisfied, and off they go to America?—I am sorry to say I have had a very large experience of them.

16,537. May that be described, as far as this court is concerned, almost as a daily class of case?—Well, with me it is certainly a weekly experience.

16,538. In that class of case you find the person out abroad generally sets up a new home?—I think almost invariably. I could put it almost as high as that.

16,539. And sometimes they cannot be found and a case cannot be brought unless desertion is made an only ground?—Yes.

16,540. Would that be one of the class of cases which would be in your mind when you pointed out to Sir George White the dangers of separation without divorce?—That is what my opinion was founded upon—my experience in that respect. For instance, where a man leaves his wife and goes to America, and after three or four years forms a new relationship, generally he precedes his second marriage by some pretended form of divorce without any knowledge on the part of his wife left behind. He then lives in a state of immo-

rality as far as our law goes with that wife, and his children if he returns here would be illegitimate. I cannot believe that religion or morality should sanction such a state of affairs. Often it happens that the wife deserted is deserted under such circumstances that she herself forms a new relationship which is not sanctioned by the Church or State; and I think it is much better to compromise on that ground and make desertion under those circumstances a ground for divorce than to adhere to our present arrangement.

16,541. At present they must prove the adulterous intercourse as well?—At present, yes; but I say it is better to change the law and make desertion of that kind in itself a ground for divorce without putting the wife to the expense of proving—which would probably be beyond her means altogether—that the husband was living in adulterous relations with some woman in America. She might prove the fact of his desertion of her which should give her relief, but she could not go beyond and prove the adultery in America. Therefore, it would be better to sanction the marriage in America and let his children grow up as legitimate, and be considered as such here, if they returned here; and give the wife the opportunity of re-marrying here.

16,542. That would be done by giving her a ground for divorce on the ground of desertion?—Yes, provided it was such desertion as would satisfy the court that it was an obstinate and intentional desertion and had been continued for a certain number of years.

16,543. Do you, from what you have told us about sexual immorality in the United States and in this country, regard the standard as higher or lower in America?—I should say from my own observation the standard is higher in America. Perhaps I should not speak definitely on that subject because there has been a great change in the moral condition in America owing to the great immigration there. What effect that has had one cannot say. But in the days of my boyhood such cases of sexual immorality as one sees here never occurred. There was a particular arcadian simplicity in the people that would as strongly deprecate any act of that kind that nobody committed it. Then the population was not so large then, and every man's conduct was under the eyes of his neighbour. Of course, I do not say there is anything in an American that makes him better than people here, but there had grown up with the people a higher standard with regard to sexual misconduct in the United States which I think pervades society there now.

16,544. You said, in examination, that you were led to the conclusion that there were too many grounds for divorce in America, and too few in England. Would you regard it as a matter of international importance that a uniformity of law in the end should obtain on a proper basis (whatever that basis is), and should prevail all over England and America?—I think it would be an ideal condition of affairs.

16,545. That the same speaking people should find their social position exactly the same wherever they went?—Not only that, but I think it is obvious to anybody who has any knowledge of the relations between the two countries that there is hardly a State or a county in the United States in which there is not some representative of a family in England.

16,546. Your States are moving, apparently, in the direction of a law which would be common to them all?—Personally, I hope it will be so. I do not think it could ever be brought about, but in my opinion the Federal Government should have a Federal divorce law. But the States would not give up their law, I am afraid, because of their independent sovereignty. However, that would be an ideal condition of affairs—a Federal judge having jurisdiction over divorce.

16,547. And if I might expand that idea, if possible one would like to see that uniformity extended to all Christian nations?—Yes.

16,548. We may think it ideal, but still the world is progressing?—I am afraid it is only ideal.

(Chairman.) I am sure I must thank you very much, not only for the trouble you have taken in getting up your evidence, but for the way you have given it before us to-day.

Adjourned for a short time.

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[Continued.]

Mr. JOHN ARTHUR BARRATT called and examined.

16,549. (*Chairman.*) You are a member of the United States Supreme Court Bar, of the New York Bar, and of the Inner Temple?—Yes, I am.

16,550. And you have actively practised at the bar in New York for 18 years?—Yes.

16,551. And in more recent years you have practised in London—for the past ten years?—Yes, I have.

16,552. And I know you have had considerable experience of the Divorce Court?—Yes.

16,553. And of the American law, which is very often proved in that court?—Yes, I have.

16,554. Are you also one of the counsel to the American Embassy?—Yes, I am; and to the American Consulate also.

16,555. By that you mean to the United States?—Yes.

16,556. Are you a member of the Council of the International Law Association and of its Committee on Divorce Jurisdiction?—Yes.

16,557. And you have advised the British Government on American law in several important cases?—Yes.

16,558. You have already said that you have had a large experience of the law of marriage and divorce in the United States, and have frequently given evidence in the English court as an expert on the subject?—Yes, I have.

16,559. We have heard from Mr. Crane that the questions of divorce law and marriage have been engaging the attention of American lawyers and other public citizens?—Yes.

16,560. You have a statement here in connection with the Congress held at Washington in February 1906, and in Philadelphia in November of the same year, on the subject of divorce law reform?—Yes.

16,561. Would you just take your proof from that point and give us the effect of it?—"One of the results of the deliberations of that Congress was the drafting of a model divorce law, which has been adopted by statute in New Jersey, Delaware, and Wisconsin." I take that statement as to the law of New Jersey from a letter from Mr. Walter George Smith, who was the Chairman of the Committee of Resolutions at that Congress.

16,562. How do you deal with Mr. Brierley's point that that does not agree with the statutes in the census book?—I think the Act was passed since this census report was gotten out, since the matter printed in the report was sent to the Washington authorities.

16,563. The statute seems to be 1907?—Yes.

16,564. And this census report is only up to 1906. But it does refer to the statute of 1907?—Oh, 1907? Very well; then my letter from Mr. Walter George Smith on that subject is in the present year 1910, and he says it has been adopted by statute in New Jersey, Delaware and Wisconsin.

16,565. Do you think there has been some Act since what we have here?—Yes, I think quite recently.

16,566. Perhaps you would state what the terms of the letter are?—Mr. Smith's letter is dated February 14th, 1910.

16,567. Would you just read what he says?—He says: "Uniform divorce law is now operative in three States only—in New Jersey, Delaware and Wisconsin."

16,568. (*Mr. Brierley.*) A letter is put in from Mr. Duffield, the President of the Bar Association of Newark, New Jersey, dated 29th April 1910. It says: "The causes of absolute divorce in this State are (1) adultery; (2) desertion"?—Yes, I noticed that discrepancy, and I do not know how to explain it, unless it is that the other causes of the model law, bigamy, for instance, would be a cause of annulment.

16,569. (*Chairman.*) Where is that?—I am now speaking of the causes in the model law. Mr. Brierley suggests that the answer, on page 31 of the Appendix, from Mr. Duffield, of the Supreme Court in New Jersey, mentions only two causes, adultery and desertion, and he says divorce from bed and board for cruelty.

16,570. (*Mr. Brierley.*) That corresponds with the Bureau Report?—Well, that is the only explanation I have to give, that Mr. Smith made that statement.

(*Chairman.*) Is the statute of 1907 referred to in this?

(*Mr. Brierley.*) Yes, I think it is page 274, if I remember right.

16,571. (*Chairman.*) Yes, May 17th, 1907. You think it is probable there may have been a subsequent Act?—I think it may be so.

(*Mr. Brierley.*) I only point to a letter dated the 29th April this year. The President of the Bar Association of New Jersey seems to state the law in accordance with that Act of 1907.

(*Chairman.*) Do you get that from his proof?

(*Mr. Brierley.*) No, from this Appendix put in by Mr. Barratt, page 31.

(*Witness.*) On page 307, the New Jersey Divorce Laws of the Census Report—

(*Mr. Brierley.*) I think that is before the Act of 1907.

(*Chairman.*) It would seem that there had been no change.

(*Witness.*) But on page 307, my Lord, the causes of absolute divorce are five in number, and there are four in number in 1902. May I ask you to refer me to the Act of 1907?

(*Mr. Brierley.*) Page 274.

(*Chairman.*) I do not know that it matters.

(*Witness.*) Apparently there is some discrepancy there.

16,572. Perhaps you will proceed with your note?—And strong effort is being made to bring about its adoption in the other States. As the Constitution of the United States does not confer upon Congress the power to legislate upon divorce, no Federal statute can be passed without an amendment of the Constitution. This is deemed impracticable at present owing to the serious difficulties in the way of passing such an amendment, as it requires the consent of three-fourths of all the States. The Divorce Congress was attended by delegates from 40 States and held a discussion lasting four days—and I may say that the Chairman of that Congress was the Honourable Samuel W. Pennypacker, Governor of the State of Pennsylvania. In its address to President Roosevelt and to the United States Congress and the Governors and Legislatures of the various States, it said:—"The great and constantly increasing number of divorces in the United States has aroused a general public interest which has resulted in a widespread movement for their restriction. As one result of the discussion on this subject there is a well-founded belief that a part of this increase in divorces, attended with special evils and scandals, is due to the lack of a divorce law uniform throughout the nation." The Congress discussed the various phases of the difficulty, and concluded almost unanimously, with reference particularly to public or private hearing of divorce cases, that the advantages of a public and open hearing outweighed any of the dangers suggested, and that in the public interest such hearings were necessary in most of the States, in order to prevent a lax administration of the divorce laws. The principal subjects covered by the resolutions and the Uniform Divorce Act relate to the important matters of: (1) the causes of annulment and divorce; (2) the establishment of the two kinds of divorce—limited as well as absolute—in those States where the former does not exist; (3) the adoption of a uniform rule governing the acquiring of jurisdiction in divorce actions; and, as intimately connected with this last subject (4) the adoption of a uniform rule covering the subject of the faith and credit to be given to decrees of divorce obtained in other States. It unanimously recommended "limited divorces" or divorces from bed and board, for the same causes as absolute divorce, so as to meet the views of a large and increasing class, who on account of religious beliefs, conscientious scruples, or other sufficient

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[Continued.]

reason, would not seek absolute divorce, and are therefore, in the States where the distinction does not exist, barred in many cases from a proper relief by legal or judicial separation. The Congress recommended that such limited divorces should be retained where already existing, and should be provided for in States where no such rights exist. One additional cause for limited divorce on the part of the wife (but not adopted as a cause for absolute divorce), is the hopeless insanity of the husband, occurring after marriage. This relief was not extended to the husband for the insanity of the wife, as it was recognised that such insanity might sometimes result from the physical effect upon the wife of the marriage relation itself, in which respect the spouses are not by nature on an equality.

16,573. Would you agree with that?—Yes, I do.

16,574. You think it is right?—I think that is right. It is also recommended that no other causes should be recognised than the following, as to which a large number of the States were already in agreement:—(1) Adultery; (2) bigamy; (3) conviction of crime in certain cases; (4) extreme cruelty; (5) wilful desertion for two years; (6) habitual drunkenness for two years. Then the Congress touched on this question of migratory divorce.

16,575. That is on the question of moving from one State to another?—Yes; and I may say Mr. Howard, who is a great authority, and has written a well-known work on marriage and divorce in the United States, in discussing this part of the report of the Divorce Congress, said that their deliberations were based on the previous census of the United States, and not on the present census reports, as to statistics in divorce. And he points out that the statistics do not carry out the views of the Congress as to the supposed large number of divorces granted to people moving from one State to the other.

16,576. He thinks there is not much in it?—He says the percentage is so very slight that there is very little in it.

16,577. Well, we may have their view?—Yes; the Congress said:—"There was a general conviction that the growing increase of divorces, with their attendant evils, was, to a considerable extent, due to the misuse or fraudulent use made by the residents of one State of the laws and courts of a sister State, for the sole purpose of obtaining divorces which could not be secured under the laws of their own State. Instances of divorces thus obtained have become sufficiently numerous to give them a specific characterisation as 'migratory' or 'emigrant' divorces. Their increase within the last decade has to some extent been probably due to occasional instances of divorces of this character occurring among persons widely known for wealth or social station, as such cases not only familiarise the general public with such methods of procedure, but also, from the very eminence of the examples, tend to lower the general standard of public opinion by which such misuse of the laws of another State should be judged. To root out the scandals and evils of these migratory divorces was one of the main objects of the Congress, and several of its resolutions were addressed to this subject."

16,578. You have studied the statistics since that which have been published with the last census?—Yes.

16,579. Do you agree with what Mr. Howard says?—I agree with what Mr. Howard says entirely, and I have set it out on page 7 of my proof.

16,580. (*Sir William Anson.*) Before we pass from that, may I ask why bigamy comes in as a separate ground. One would have thought it was either nullity or adultery?—I cannot understand why that is. It seems much more natural to make it a ground of nullity or include it in the first cause.

16,581. (*Chairman.*) It would be a ground of nullity with regard to the second marriage if that second marriage was made when the first one was existing?—Yes.

16,582. But it is only a ground of divorce when the second one is after the one complained of, and then as a rule adultery follows?—Yes.

16,583. But it might mean that they would take the second marriage alone, without proving intercourse after?—Yes, I cannot give a reason for it.

16,584. Well, it would be very easy to prove the marriage without proving that they lived together after, perhaps?—Yes. "The Congress recommended the enactment by all the States of the following clause, existing in the Massachusetts Statute:—'That if any inhabitant of this State shall go into another State, territory or country, in order to obtain a decree of divorce for a cause which occurred while the parties resided in this State, or for a cause which is not ground for a divorce under the laws of this State, a decree so obtained shall be of no force or effect in this State.'"

16,585. That would cure it, because it might be of effect in the State where it was got?—Yes; but the object was, of course, this: when finally the model law becomes enacted and every State has it for its own, no one will be able to go away from one State to another for divorce. One of the greatest difficulties in dealing with divorce law in the United States is that created by article 4 section 1 of the United States Constitution which provides that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State." Then I set out that one of the difficulties is as follows:—Citizens of one State go to another State which grants divorces for causes not admitted by the home State, and after residing in the other State for such period as is required by its laws for the plaintiff to reside before a petition for divorce can be filed, he or she files such petition, and in due course procures a divorce and returns to the home State. The successful petitioner then claims that under the "full faith and credit" clause of the United States Constitution, the courts of the home State and of every other State must recognise such divorce as valid. A bitter legal warfare has existed for some years over this point, some States admitting that such decree must be recognised, others denying such recognition, and still others holding that it is optional and a matter of "State comity" whether or not such decree shall be recognised by the home State. It is not generally understood by those familiar with English law, why it is possible for the courts of the various States to enforce their different views on such a question, and why there is not one law throughout the United States. It must be explained, therefore, that the subject of divorce legislation does not come within the powers of Congress, but is confined to the legislatures of the different States, and that in such matters each State has the power to pass and enforce its own laws (just as the different legislatures of the British Empire, for example, in Australia and Canada, have also such power), subject only to the above-mentioned "full faith and credit" clause of the United States Constitution, and that no State law can contravene any other provision of the United States Constitution. It was not until quite recently that this matter has been largely put at rest by a decision of the United States Supreme Court in "*Haddock v. Haddock*." Stated shortly, that case decided simply this: In that case the courts of New York refused to recognise a divorce granted by the courts of Connecticut of a woman while domiciled in New York, she having been deserted by her husband and never having been served with process within the State of Connecticut. (But notice of the pendency of the petition had been published in the newspapers as required by the law of Connecticut.) She had never resided in Connecticut, and was not, in fact, informed of the decree until some long time after it had been rendered. It was admitted that Connecticut was the domicile of the husband at the time of the alleged divorce. But by American law the husband who has been guilty of conduct giving his wife ground for divorce against him, cannot by removing from the matrimonial domicile draw her domicile to his; but she may in such case either remain in the matrimonial domicile or acquire a fresh domicile of her own in any other State or territory. The wife took proceedings against the husband in New

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York for separation and for alimony. The husband set up in defence the prior divorce in Connecticut. The New York courts refused to recognise it on the ground that the Connecticut court had jurisdiction over only one of the parties. The United States Supreme Court held that the New York courts were not compelled under the "full faith and credit" clause to recognise such decree. It further stated that whether or not any State should recognise a divorce of one of its own citizens by another State where service upon the defendant was not made personally within the State granting the divorce, but merely by publication or advertisement or service outside the State, was optional and not compulsory upon the first State; and if it was recognised, such recognition rested simply on inter-State comity. That case set at rest whether or not such divorces should be recognised. Discussing the question of divorces against non-residents, the Congress said, "Jurisdiction for divorce against non-residents, under varying limitations and restrictions, is not only the practice to some extent in every State of the Union which allows divorces, but is the necessary result and outcome of what has been called the American doctrine, allowing the wife to acquire a separate domicile when the husband has been guilty of a matrimonial offence entitling her to a divorce. From the earliest times and in the courts of every American state, as well as in the United States Supreme Court, the doctrine that the wife in such cases must follow the husband into his domicile for relief, has been rejected as not only unequal and unjust, but as being practically a denial of justice in many cases. And in a few States the simple claim of the wife that a matrimonial offence justifying a divorce has been committed, entitles her *prima facie* to the separate domicile for the purpose of trying the question." I need not explain that no such doctrine applies in this country; it is purely an American doctrine. "This doctrine of separate domicile of the wife when she has a right to divorce is too firmly rooted in American jurisprudence to be disturbed, even though it has brought in its train as a logical result inconvenience and uncertainty, arising from the diverse effect accorded to such decrees outside of the State which granted them, where the defendant was not served within its jurisdiction. But an examination of the laws and decisions of the several States discloses that over ninety-five per cent. of the States (all but three, or perhaps two) do, on principles of comity and under certain restrictions, recognise as valid decrees obtained by *bona fide* residents in other States, against non-residents of such State. This recognition is based upon the essential justice of according to other States the same right and privilege which each State exercises for itself. Actual notice of the suit to the non-resident where practicable, and an opportunity to defend, are conditions imposed by natural justice, and the Uniform Divorce Law," and the Uniform Divorce Law "provides for giving this actual notice out of the State to the defendant, where practicable, in addition to publication within the State. This publication is in all cases required by the Act for the purpose of preventing secrecy. The details of the method of working out this essential principle of serving out of the State are, however, to be left to each State. But when these conditions are substantially complied with, and jurisdiction is obtained over the defendant by personal service within or without the State, where practicable, the Uniform Divorce Act makes the decree conclusive by the provision, 'Full faith and credit shall be given in all courts of this State to a decree of annulment of marriage or divorce obtained in another State when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed by sections 7, 8, 9 and 10 of this Act.'"

16,586. That part is of more importance in America than here?—Yes, it is.

16,587. Because you are hampered with the diffi-

culty of having no uniformity all over the country?—Yes.

16,588. If you had that you would get rid of all this difficulty?—Quite so; and it provides the reason why there are more divorces in the United States than in England, because a wife is not driven in our country to sue for divorce in the domicile of her husband; therefore she may go into another State and become domiciled there, and then she becomes entitled to bring an action for divorce against her husband wherever he may be, on grounds granted in the State to which she has moved. It facilitates divorce very much where women are deserted by their husbands, and do not know where to find them.

16,589. Of course you have not only not got uniformity of law, but you cannot get it by any action of Congress?—No.

16,590. You can only get it by the concurrence of the States?—Yes; and the same difficulty is found in laws of bills of exchange and promissory notes. It has been found desirable to have a uniform law there. They have a model law and it has been passed by a number of the States; as in the case also of a game law (protecting certain birds) which was discussed before the House of Lords some time ago.

16,591. If you could get a federal law giving federal judges alone jurisdiction, there would be an end of the difficulty?—Yes.

16,592. Now the next paragraph is another point?—Yes. The Divorce Congress also decided, because divorced persons so frequently re-marry within such a short time after divorce as to arouse suspicion of collusion or bad faith, that the first decree in divorce should be interlocutory or a decree nisi, and should only become absolute one year thereafter. There has been much written and said about the scandal of these migratory divorces, but I think the statistics in the last United States Census Report on divorce shows that the alleged proportion of them has been greatly exaggerated. Professor Howard, of the University of Nebraska, in his article in McClure's Magazine, December 1909, referring to the opinion of the Divorce Congress as to the frequency of migratory divorces, says that their opinion was founded upon the prior United States Census Report of 1867 to 1886, but that the present Census Report, 1867 to 1906, shows that the proportion of migratory divorces is very much less than was supposed. He also says: "The original motive which finally produced the Government Report compiled by Colonel Wright 20 years ago was to get light on the extent of clandestine divorce," or migratory divorce. "It was then the common opinion that the majority of divorces were obtained through secret migration from State to State in the search for 'easy' laws." The result of the investigation was a surprise. It showed pretty conclusively that inter-State migration for divorce does not much affect the rate. At that time one of the foremost practical sociologists of the country, the Rev. Samuel W. Dike, of Auburndale, Massachusetts, to whose suggestion, in fact, the report was mainly due, declared that "the establishment of uniform laws is not the central point" of the divorce problem. The new report confirms this conclusion. Of the 820,264 divorces during the two decades granted to couples known to have been married in the United States, 21 per cent. were to those married outside the State in which the divorce was rendered. Of course this does not mean that one couple out of five whose marriage was thus dissolved migrated for the purpose of obtaining a divorce. On the contrary, says Dr. Hill, "it is probable that the motive was present in a comparatively small proportion of the total number of cases, and that to a large extent the migration was merely an incident of the general movement of population, which takes place for economic and other reasons unconnected with divorce." In fact, according to the census of 1890, 21.5 per cent., and by that of 1900, 21 per cent. of the native population were living outside the State or territory in which

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they were born. The coincidence in proportions is striking. Here and there, in a town or county, as has already been shown, "colonisation" for divorce may be a serious matter; but, considering that the average duration of marriage before divorce is ten years, it seems clear that on the divorce movement as a whole the influence of inter-State migration is almost negligible. That is directly contrary to the commonly accepted opinion, and I am sure until I saw the Census Report myself, and went into the figures, I was of the same opinion, that a very large proportion of divorces granted were what one may call migratory divorces. My own opinion is that the wide publicity given to certain migratory divorces of people in high social position has given an impression that such divorces in all grades of society are much more numerous than they are in fact. I think also that the statistics giving the proportion of divorces in the United States to marriages—stated in the last United States Census Report to be one divorce in 12—are founded upon very incomplete figures as to marriages.

16,593. This is another point?—Yes.

16,594. This is dealing with the suggestion that one in 12 or 15 marriages is dissolved?—Yes, we have it stated that one marriage in 12 is dissolved by divorce in the United States; and it seems appalling, but one knows that nothing approaching that number have been divorced when one looks round at one's friends and one's family and so on.

16,595. Then I think you explain how that came about?—Yes.

16,596. You say it is founded on incomplete figures as to marriage?—Yes, many thousands of which, I am quite satisfied, until very recent times have never been registered at all. It will be seen at page 52 of the Report that in the United States, from 1887 to 1906, there were 2,844 counties in 206 of which marriage records were wanting altogether for one year or more; that there were no records at all of marriages in South Carolina, and none for the State of Maine prior to 1892. Again, at page 20 of the Report it is shown that in the States where negroes predominate, divorces of coloured people constitute from 50 to 90 per cent. of all divorces. For the period in question undoubtedly a large proportion of those would be slave marriages, of which no record whatever would be kept. There are thus 50 to 90 per cent. of all divorces in the Southern States (where there are black people) in many of which there could possibly be no record of the marriage; for they must have been married during the slave times.

16,597. Then the point you make is that divorces have been compared with the number of marriages registered?—Yes.

16,598. Whereas a great mass have never been registered at all?—Yes, thousands and thousands.

16,599. And therefore the comparison is wrong in principle; I mean for the purpose of seeing how many in the thousand are dissolved?—Yes. Again, at page 35 the Report shows there were 23,437 divorces of persons married in foreign countries. These marriages, of course, do not appear in the United States marriage statistics. Again, in States where there are records, the Report at page 189 shows that in 1906 only 21 States out of the 50 States and territories had a law for the State registration of marriage, although there were doubtless in some of them city or county registration, and church records in some denominations, though these would be scattering, as the majority of marriages would be in the private home of the bride. One knows the custom throughout the United States for many years was not marrying in church at all. The vast majority, probably 90 per cent. of marriages in the United States are solemnised in the home of the bride.

16,600. And no records kept?—There may or may not be. Where it is the duty of the clergyman or minister to make a return of the marriage I know in many cases that is not done; sometimes no penalty attached to a failure in making those returns, and therefore they are very careless. In my own experience, I know that there were no regular official records of

marriages in New York City prior to 1853 and only a few scattering between 1847 and 1853. In Brooklyn there were no official records of marriages prior to 1866, and no State records until 1881. There was no penalty attached to failure to make returns of marriages, and it was a most common experience to find in practice most incomplete returns for the years in which they were made. The Census Report says itself at page 190: "In spite of the large number of States that now make provision for State registration, however, comparatively few as yet have an effective system in operation. In only eight States, including all the New England States (with the exception of Maine), New Jersey, Michigan, and Iowa, does there, according to the statement of the registration authorities of the respective States, appear to have been an approximately complete return of marriages," only eight States out of 50 in which there was any approximately complete return of marriages for the whole period, "although for part of the period at least the returns in Wisconsin seem to have been fairly satisfactory. In Maine a new law passed in 1891 resulted in an effective system of registration, while California and South Dakota in 1905, and Pennsylvania in 1906, established systems which promise good results. Of the States that have no provision for State registration, but publish official statistics of marriages, Florida and Ohio secure returns that are considered reasonably accurate by the State authorities. In all the other States attempting State registration or publishing statistics the results are more or less unsatisfactory. Four States—Arkansas, Colorado, Illinois, and Kentucky—either make no attempt to enforce the statutory provisions relative to the State registration of marriages or else do not publish the results of the returns sent in to the authorities in charge of this registration." In California and the District of Columbia, Illinois and Indiana, the Report says the returns were incomplete and unsatisfactory, and in New York in 1906 the commissioner of health to whom the local boards should make returns, said, "It is very hard to force the local boards to carry out the provisions of the Public Health Law in this respect. Many Roman Catholic priests refuse to report marriages performed by them, and the local boards do not try to make them comply with the law." Even in Philadelphia (Report page 196), under the law of 1905 there were 14,020 marriage licences issued and only 12,000 odd returns made, making in one year, 1906, in one of the most populous states of the United States, 1,314 marriages not reported at all. If you multiply that by 20 years, see the enormous number not reported in the State of Pennsylvania, even although no doubt some licences did not result in marriage. Recently in a trial in Ohio, I heard a former judge of a Probate Court say that about 10 per cent. of marriages were not returned during his term of office. It will be seen from this that from 1867 to 1906 there must have been many thousands of marriages not returned at all. Again "common law" or Scotch marriages without any ceremony have been very common throughout the United States, and were only forbidden in New York in 1901. Of these there would be no record. A common law marriage is one of the commonest things throughout the United States, a form of marriage without any ceremony, by mere consent of the parties living together and giving out to the world that they are man and wife. There is no record of those thousands of marriages in the United States. May I just refer, in addition, to the present Census Report as to the place of marriage. It was shown that throughout the whole period 33,000 odd of the husbands' marriages were unknown as to place, and 68,000 odd of the wives', making a total of 101,827. That is, of course, with regard to the divorce cases. And there were 23,000 of those married in foreign countries, making a total of 125,000 marriages of which there would be no record probably in the United States in the cases where there were divorces.

16,601. Divorces as taken from the court record?—Yes.

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16,602. And the marriages can only be got from where they have been registered?—Exactly.

16,603. Your general view is that any comparison they make there in the statistics between the number of divorces and the number of marriage records is utterly fallacious?—Absolutely unreliable.

16,604. Why do they make them?—I do not know. You will find the Census reporter himself calls attention to the very things I am now reciting. At the beginning of the marriage statistics, Volume 1, page 182 and page 191, he goes into the very figures I have been quoting to you. He points out exactly what I point out.

16,605. (The Archbishop of York.) Would you mind reading his words, or his summary, if you can?—For instance, at page 190, at the bottom, "In spite of the large number of Statutes that now make provision for State registration," and so on down to the word "registration," in the next column.

16,606. (Chairman.) Yes, he is pointing out the imperfect kind of registration?—Yes. Then on page 189, at the bottom: There were on December 31st, 1906, 25 States in which there was provision of law for the State registration of marriages, as compared with 21 at the time the previous report was issued. That is only 25 States out of the whole 50.

16,607. Then the statement that there is one in 12 or 15, whatever it is, which are dissolved, would seem to be entirely wrong?—Absolutely and entirely unreliable; it is entirely wrong. It cannot possibly be true. It is true in the sense that it is the proportion of divorces to registered marriages, but I am pointing out that there are hundreds and thousands of marriages never registered at all.

16,608. And I may take it, in America a very large number of people have been married in these countries, on this side, before they have emigrated, and those would appear in the divorce statistics?—Yes.

16,609. You do not know how many thousands or millions they number?—Many millions have emigrated during the last few years, and their divorce rate would be as high as or higher than of American citizens.

16,610. And you think that the proportion given is nothing like what is really the fact?—Nothing like it, and the Report shows it. Then page 194, as to New York.

16,611. I do not know whether you could tell us whether the tables show the proportion of marriages dissolved to the population?—Yes, they do.

16,612. Can you tell us what it is. I do not know whether you have dealt with that in your proof?—No, I have not. Mr. Crane dealt with that in his proof.

16,613. (Mr. Brierley.) I do not know about that. He gave the figures 73 per 100,000?—Yes, he did. I think it is page 72; proportion of divorces by States per 100,000 population—and to married population.

16,614. (Chairman.) Oh, married population?—Yes, and per 100,000, page 72. Then divorce rates per total population you will find on page 70—the rates of divorces.

16,615. Well, then, we can compare that ourselves?—Yes. That is a fact very often lost sight of, and one has it quoted to one that the Census Report itself says 1 in 12 or 1 in 15; and so it does, but of registered marriages only, of course.

16,616. Then you say in your opinion —?—Yes. In my opinion, therefore, the proportion of divorces to marriage throughout that period is almost impossible of ascertainment, and the figures 1 in 12 are utterly speculative and in no sense indicate the true proportion. This Report, page 264, shows that the statistics of divorce include "nullity suits and judicial separation," or limited divorce from bed and board, thus largely increasing the figures and making it impossible to ascertain definitely how many cases are those of absolute divorce only. And while the actual number of divorces has been increasing, year by year, throughout the United States, Howard says, Volume 3, page 220: "To the student of history it is perfectly clear that it is but a part of the mighty movement for social liberation which has been gaining in volume and strength ever since the Reformation."

16,617. Is it clear that the Report treats on those figures divorce *a mensa et thoro*?—The divorce statistics in the Census Report includes *a mensa et thoro*, absolute divorce, and nullity. The Commissioner says that himself at almost the beginning of his Report. He says the statistics are statistics not only of absolute divorce but of judicial separation and nullity also. It does appear in the Report. I can give you the page later on. "The Rev. Samuel Dike, Secretary of the National League for the Protection of the Family (a society of which the Hon. Seth Low, formerly at the head of Columbia University, is the President) in his report for 1909, says, 'The Government Report has clearly shown that there is, with few exceptions, an increase of divorce throughout the civilised world far exceeding the increasing population. Our divorce question in this country thus has become simply a part of the vast world movement, but much greater in volume here than in Europe.' It has been suggested that one of the chief causes of the great number of divorces in the United States is the great number of causes and the slight grounds for which divorce is granted in some States, and that if there were less number or more restricted causes there would be a less number of divorces." On that point I must differ with my learned friend Mr. Crane, who stated that in the State of New York, where there was only one cause, there were many less than in Washington, where there were several more causes; that that was the ground for the increase in Washington.

16,618. Have you the actual figures?—Yes, which show the exact opposite. The answer to this is two-fold. Firstly, that in practically every European country the divorce rate has been steadily increasing for many years, and yet the causes vary from three in France to twelve in Sweden, and in several the causes are as liberal as in any State of the United States, for example, invincible aversion in Austria; vexatious mortification in Hungary; grave indignities in Belgium and France; prodigality and violent disposition and opposition of feeling and thought amounting to hate in Sweden. In Formosa loquacity is a cause of divorcing the wife. I am afraid if that was a ground here, it would cause a great many more divorces than there are now. And in Algeria, where there are thirteen causes, previous wooing in which no final acceptance or refusal has been had is a cause of divorce, while in the new German Code for 1900 divorce is allowed where either spouse has been guilty of grave violation of the obligations based on the marriage or so deeply disturbing the marital relation through dishonourable or immoral behaviour that the continuance of the marriage cannot be expected from the other; and yet Germany is not looked upon as a country beset by the divorce evil.

16,619. May I ask on that. In the Debates of 1857 it was said Prussia was rather affected in that way. I do not know where you get the statement from that Germany is not a country affected by the divorce evil?—That is my statement; the quotation ends at the word "other."

16,620. I know, but where do you get your statement from?—That Germany is not a country beset by the divorce evil? That is my own opinion. I think it is not looked upon so now.

(Mr. Brierley.) The figure is 15 per 100,000, as against 73 per 100,000 in the United States.

16,621. (Chairman.) Now, in reading through the Debates of 1857, Prussia was looked upon as a bad example. There must have been a change in the Legislature?—Well, this is the German Act for 1900 that I am reading now.

16,622. It covers the whole of Germany?—Yes. Of course the remarks you are referring to are 50 years ago. "The following table, based on the United States Census, 1906, will show that the various States of the United States on the whole, have no more causes for divorce and no more lenient divorce than the countries of Europe, excepting Great Britain." Then I give the examples—

16,623. (Chairman.) You have had those tabulated and if you would like them to appear in your proof

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they shall?—Yes. I may say, in Australia there are four causes: habitual drunkenness, wife left two years without support, against wife who for one year has repeatedly assaulted or cruelly ill-treated her husband; while in Victoria, five causes—

16,624. We will take that as read down to the words "up to 1900 in Prussia"?—Yes.

The following are the examples the witness refers to, and had incorporated in his proof:—

Austria.—For non-Catholics, five grounds of divorce absolute (including "invincible aversion, both parties desiring divorce"; one year's desertion; "designs endangering life or health"; repeated semi-cruelty).

Belgium.—Five causes (including "mutual consent" after two years and before twenty years from marriage; adultery of husband if he brings mistress to the house; "cruelty"; "grave indignities"; imprisonment with loss of civil rights).

Bulgaria.—Eleven causes (including cruelty, drunkenness, insanity, imprisonment for theft, fraud, &c., three years' abandonment).

Denmark.—Six causes (including five years' absence and imprisonment for life).

France.—Three causes (including "grave indignities").

Germany.—Four causes (including three years' insanity). Prussia had seventeen causes, including "mutual consent"; "inconquerable aversion," "quarrel," "some disposition endangering health"; insanity for one year. Saxon code had thirteen causes, including "incorrigible drunkenness"; "repeated cruelty."

Hungary.—Eight causes (including abandonment for six months; imprisonment for five years; "serious" and wilful violation of marital obligations; formerly "vexatious mortifications continued for a considerable time").

Norway.—Six causes (including three years' desertion and imprisonment for life).

Roumania.—Four causes (including abuse, injuries, or ill-treatment; sentence to imprisonment or hard labour; attempt on life).

Russia.—Six causes (including banishment and entry religious order; five years' absence). Jews eleven causes (including wife who violates ethical propriety, or curses her father-in-law, and desertion).

Scotland.—Adultery of either husband or wife, malicious desertion for four years).

Servia.—Twelve causes (including malicious desertion, life imprisonment, insanity for three years). By Royal decree also, prodigality, inebriety or violent disposition, opposition of feeling and thought amounting to hate.

Switzerland.—Seven causes (including two years' desertion, incurable mental disease).

In British Colonies there are:—

Australia.—*New South Wales.*—Four causes (including imprisonment for seven years or frequent conviction of husband, wife left two years without support, "habitual drunkenness" two years; against wife who for one year has repeatedly assaulted or cruelly beaten "him"; three years' desertion). *Victoria.*—Five causes (including three years' desertion or habitual drunkenness or imprisonment; repeated adultery of husband).

Canada.—Legislative divorce only, but for adultery of husband and wife equally.

New Zealand.—Four causes (including "adultery of either husband or wife," five years' desertion, four years' habitual drunkenness, seven years' imprisonment for attempted life of other).

Nova Scotia.—*New Brunswick.*—*Prince Edward's Island.*—Adultery of either husband or wife, and in Nova Scotia "cruelty."

The United States Report says, Part I. p. 367, as to Germans: "Even before the Germans were Christianised they were distinguished among ancient peoples by their regard for the sanctity and permanency of the marriage relation. Nevertheless the oldest German law permitted absolute freedom of divorce by mutual agreement. . . . From its beginning the Protestant Church rejected the sacramental nature of marriage, and permitted absolute divorce for the causes already indicated,

"besides a temporary separation for less grave offences."

(*Witness.*) Up to 1900 in Prussia divorce could be had upon mutual consent if no issue of the marriage. Howard Vol. 3, page 217, shows that in 1880 New York admitted one cause for divorce, New Jersey two causes, Pennsylvania, four causes, and yet on the average in that year for each 100,000 married couples New York granted 81 divorces, New Jersey 68, and Pennsylvania 111, so that New Jersey with two causes had many less divorces than New York with only one.

16,625. Is that the point you mentioned just now?

—Yes, and I give still further figures as I go on. Summarising the effect of alteration of divorce Statutes, Howard says, Vol. 3, page 218, "Often a sudden increase and occasionally a slight decrease in the rate is observed without any alteration in the Statutes." Referring to the former Census Report, he says that Mr. Wright believes that in fourteen instances of variation of Statutes his statistics of divorce vary, "but under careful scrutiny in some instances his statistics reveal no certain causal relation between the change in the divorce rate and the antecedent change in the Statute." Then Professor Willcox criticising Mr. Wright, holds that only four or five instances show considerable influence of legislation on the statistics; in four cases Mr. Wright's test must be rejected, "while in the rest that influence is slight, temporary, or questionable." Howard says, page 219, "If it were always the essential purpose of a good law to diminish directly the number of *bonâ fide* divorces the more rational course would be to imitate South Carolina, and prohibit divorce entirely. The most enlightened judgment of the age heartily approves the policy of some States in extending the causes so as to include intoxication or the habitual use of strong drink or narcotics as being equally destructive of conjugal happiness and family well-being. Indeed, considering the needs of each particular society, the promotion of happiness is the only safe criterion to guide the law-maker in either widening or narrowing the door of escape from the marriage bond." Then I go into the further question as to the number and kind of causes for divorce. The United States have from the earliest times included cruelty, and almost uniformly have treated the husband and wife alike, even in the days when the colonial inhabitants were chiefly people of British race. In modern times it must not be forgotten that many millions of Americans have come from continental Europe, and of course have brought with them the liberal notions there existing as to the grounds of divorce, and I do not think there is a single cause for divorce in the United States to-day that cannot be found in some law of continental Europe. That is in answer to the constant claim that American laws grant divorce for nothing at all practically, and yet you will find nearly every cause in the United States in some continental country. England, among other countries granting divorce, seems to be almost alone in its restricted causes for divorce; and countries having an equally high reputation for morality have a greater number of, and less restricted causes for divorce, so that it cannot be said with any approach to accuracy that an increase in the number or kind of causes for divorce has any direct relation to the increase in the number of divorces. Then I take the actual percentage from the Census Report to check that. Take part 1, page 72: The annual average number of divorces to the 100,000 population from 1870 to 1900. New York increased from 16 to 23 (nearly 50 per cent.)

16,626. Adultery was the only cause?—Yes, and yet it increased nearly 50 per cent., while Connecticut with eight causes decreased from 84 to 50 (over 30 per cent.), and Rhode Island with seven or eight causes increased only from 85 to 105 (a trifle over 20 per cent.), and Vermont with six causes increased from 50 to 75 (only 50 per cent.), while New Jersey with five causes increased from 9 to 23 (about 150 per cent.), New Hampshire with 14 causes in

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this period increased only from 53 to 112 (only a trifle over 100 per cent.), and Maine with only 10 causes increased nearly as rapidly, viz., from 61 to 117 (just under 100 per cent.).

16,627. Would you kindly tell us, as to this increase in New York, with only one cause, having a percentage which is in some cases less than the increase in places where there are several causes; how do you explain that. Are you able to?—Well, the first explanation to my mind is this, that the number of causes has nothing whatsoever to do with the increase; because it shows that in New Hampshire, with 14 causes, the increase was 100; whereas in New York, with one cause, it was only 50 per cent. Then if you take Connecticut, with eight causes of divorce, it decreased 30 per cent. over New York.

16,628. Have you been able to form any conclusion at all from your experience what is the meaning of that?—My conclusion is, that whatever the reason for the increase or decrease is, it is not in the statutory causes for divorce at all. It must be in the character of the population; perhaps a greater influx of foreigners into one State for the time being than into another; or it may be in some States the less period of residence may cause the increase. Yet in other States the figures show that there is no greater increase than in the States like Connecticut or Massachusetts, where you might have two or three years' domicile; the increase in those States is no greater than in Massachusetts. So I am inclined to Mr. Howard's view, that there is a general tendency to increase throughout the world of divorce in different countries and in different States for different reasons; and I do not think any student can get at the different causes. There are many causes; it may be an influx of foreigners, as I say; or it may be that people who are very anxious for divorce may find out a particular State, or city of a State, in which the judges are not so severe in the matter of proof, and they go and reside in that State, and that increases the number of divorces in that State; but that only accounts for a very small proportion, as I said before—not more than 20 odd per cent. if at all. So it is hard to draw conclusions from the number of causes. As to the suggestion that if you have a State with only one cause you are bound to have a less number of divorces; these figures show absolutely the contrary. Then if you take the same figures in proportion to the 100,000 married population (the other was 100,000 population), but in 100,000 married population it is the same. Then in Rhode Island it increased from 203 to 281 (about 38 per cent.), in Vermont from 116 to 177 (about 50 per cent.), in New Jersey from 46 to 60 (about 25 per cent.), in New Hampshire from 240 to 272 (about 13 per cent.), and in Maine from 212 to 282 (about 33 per cent.). Then again, Washington with only eight causes, in 1900, had the highest percentage in the United States.

16,629. Is that Washington—the capital?—No, the State of Washington by the Pacific coast; and with only eight causes it has the highest percentage; and yet New Hampshire, with 14 causes, has infinitely less, with nearly double the grounds of divorce. In New Hampshire, with 14 causes, the number of divorces to married population increased only one-third as much as New York with one cause, and Maine with 10 causes increased practically the same as New York with one cause. Then one suggestion was that the number of courts in the State has a great influence. Now, in New Jersey there is only one divorce court. New York has 61. And yet the increase in New Jersey, you will see, is very much greater than in New York; 150 per cent. as against 50 per cent. These instances are sufficient to show that it is not the States in which the greatest number of causes for divorce exist, nor those having most divorce courts, which have the largest annual average of divorces to the population or to the married population. Some other cause, therefore, it would appear, must have been at work to produce these diverse results. And, as above shown by Howard, the increase of the number of causes in the same State in many cases is not followed by an

increase in the divorce rate of that State. The last Census Report, page 14, shows that the divorce rate increases as you go westward, whereas in no Western State are there as many causes for divorce as in New Hampshire, one of the most easterly as well as one of the oldest States. My own opinion is that one reason for the increase of divorce in the Western States is in the great proportion of emigrants, many of whom are men who have left their families to start life anew, and whose wives have refused to follow them into an unsettled country, and they have found spouses nearer at hand, more accustomed to the rough life. I think a further reason is that in western States women have gained greater independence in occupation than in the eastern States and European countries; have gone into every kind of business and have become more able to maintain themselves, and thus more inclined to divorce in case their marriage does not turn out happily. I think a still further cause can be found in the custom which exists to a considerable extent in various parts of the United States for married couples living in boarding houses and small hotels, where several families are constantly thrown together and where there is no real home life. I think a further cause is in the very great increase in the employment of women in company with men in business offices, and thus being very often thrown into association with each other under very trying conditions, where both are subjected to greater temptations than was the case before women entered so largely into business life. I think also another cause is to be found in the fact that many divorces are procured by wives of emigrants who have tolerated ill-treatment in the foreign home, and who find that American women do not tolerate such treatment. A divorce can be had in the United States for a very reasonable sum, and such persons quickly earn a sufficient living there to enable them to afford the cost of one. I think also that native-born women of the working class in the United States insist upon and procure more considerate treatment than amongst the same class in Europe and are more sensitive to ill-treatment or cruelty, and are therefore more ready to procure a divorce on that ground. I am convinced from an observation of family life on both sides of the Atlantic that such divorces do not produce a decline in morality in the United States as compared with Europe, and I think the comparative cheapness of divorce has no such tendency, but on the contrary is the direct means of avoiding a great deal of immorality which, from poor persons being unable to procure a divorce on the ground of expense, would exist by their living openly and improperly with others without a divorce and a proper re-marriage. In some States, like Pennsylvania, where the court costs of divorce are very high, it is found that poor persons do live improperly with others rather than go to the expense of a divorce.

16,630. What is that based upon?—It is based upon a letter from one of the Legal Aid Societies of Philadelphia. It is on page 7 of the Appendix; and the Pittsburgh on page 8.

16,631. Page 7 is: "It is undoubtedly true that the costs of obtaining a divorce do prevent many poor people from securing such relief"?—Yes; then on page 8 you will find: I am unable to answer your question as to whether the cost of divorce compels poor people to live in adultery. This question, however, I have had up with several social workers in Pittsburgh, and two of the most experienced have advised me that it is their opinion that a considerable number of poor persons are living in open adultery because they cannot afford the luxury of a divorce. You will see the average attorney's fee is 100 dollars, and the court fees 48 where a master is appointed; and before the court sitting as a Chancellor 18 dollars, and in cases of jury trial 25 dollars in addition.

16,632. We will see how these letters come later on?—Yes. As to the alleged laxity with which proceedings in divorce are conducted in the United States, the Census Report (Volume 1, page 137)

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shows a steady decline in the proportion of divorces granted to petitions filed all over the United States; the percentage of decline from 1887 to 1906 being less than 1 per cent. in Virginia, and over 30 per cent. (namely, from 76 per cent. to 44·10 per cent.) in California, showing an ever-increasing carefulness in the courts in granting such decrees.

16,633. That means more petitions are refused now in proportion to the number lodged than there were formerly?—Yes, it amounts to 34 per cent. in California, 34 per cent. more care that means. Then one hears so much about incompatibility of temper being a cause. That does not exist in any State so far as I know. It has existed, and the Census shows that out of the total number of divorces from 1887 to 1906 of nearly one million, only 389 divorces were for incompatibility of temper as a sole cause.

16,634. That was at a time when it was a cause?—Yes; and yet we have it suggested constantly that you can get a divorce for anything in America, even for incompatibility of temper, and out of a million you have only 389 solely for that cause.

16,635. When was the last statute passed abolishing that?—That I could not tell you without going into the Statutes. (Appendix XII. C.)

16,636. But it has been abolished?—Yes.

16,637. Are you able to say over how long that 389 took place?—I should say up to about 10 years ago.

16,638. That would be 389 in about 13 years?—Yes, since 1887 up to about 1900. You will find that on page 80 of Volume 1 of the Census Report—as to the number of divorces for incompatibility.* I have drafted a series of questions on this subject and submitted them to the Presidents of the Bar Associations of the leading cities in some 20 odd States. We have replies now from 24 out of 50 of various States of the United States. I should like to say with reference to these letters—there are some 25 or more—in only three or four cases did I know the gentlemen who wrote the letters, and I did not in any case know their views beforehand; I picked them out simply from a general idea of getting views from various parts of the United States without distinction.

16,639. These represent letters from various judges and other legal authorities?—Yes, chiefly from Presidents of Bar Associations; and the President of a Bar Association in the United States corresponds with the position of the chairman of the Bar Council and also the president of the Law Society. As lawyers, these are not only barristers but solicitors, and come into contact with the public; so the President of the Bar Association would be conversant with the common public opinion in his neighbourhood as much as anybody.

16,640. I think the index to the persons will be found on page 9. The Secretary has prepared that?—Yes.

16,641. It shows the status and so on?—Yes.

16,642. And their position?—Yes. I also wrote to the Secretary of the Legal Aid Society in New York. That is a society for rendering services to poor people gratuitously, or for very small fees, and at my request

* The replies received by Mr. Barratt will be found fully set out in App. XII. A. and B., pp. 91 and 95.

he handed on my questions to some other societies in the great cities of the United States.

16,643. That is besides the number on page 9?—Yes; it begins with the Legal Aid Society on page 1.

16,644. Before I go on, have you made a study yourself of these letters?—Yes, I have.

16,645. We shall have to study them with some care, but can you give us the general effect?—Yes, I have summarised the effect in my proof.

16,646. Oh, I beg your pardon. Perhaps you will read any one that you think necessary?—Yes, I will. I have said here, "These replies constitute a most valuable expression of opinion." Perhaps I ought to say that I drafted a series of questions to each of these gentlemen. You will find the questions on pages 9 and 10 of the Appendix. "1. What is the state of public opinion in your neighbourhood: (a) as to whether the existing causes for divorce should be changed in any way?"

16,647. I do not think you need trouble to read them through?—No, I tried to touch on all the subjects that would be of use to this Commission. I sent those out as early as last February.

16,648. They cover, probably, all the questions that we are considering?—As far as I could. That is, the cost of divorces, and the number of divorces amongst poor people, and whether the divorce laws tend to a relaxation of the marriage tie, or disrespect for the marriage tie, and whether they tend to hasty marriages.

16,649. And the question of publicity?—The question of the publication of details in the newspapers. "Fifteen of them (in 14 States)"—it is more now—we have had several since I drafted my proof. "At least 15 of them (in 14 States) are not in favour of publishing details of divorce actions in the newspapers."

16,650. Only three are in favour of it?—Yes; and four are doubtful.

16,651. That is 22?—Yes; we have 25 or 26 now.

16,652. The great majority of your correspondents are in favour of no publicity of proceedings?—The great majority; only three are in favour of it, and four are doubtful; they do not express an opinion. So that throughout the United States (out of 25 States), you have only three in favour of publication of details of divorce cases in the newspapers.

16,653. Would you give us one answer just to show how it is expressed?—Against publication?

16,654. Yes?—Here is one of the few in favour on page 13, from Atlanta, Georgia; and he says: "Personally, I doubt the advisability of publishing details of divorce actions in the newspapers, but I doubt whether this voices the general sentiment on the subject." His opinion is that the general sentiment is not against it, "The vicious appetite for prurient news will not be likely to be abated in this country until we have progressed much further along lines of ethical culture." I will give you one of the others. Page 16, from Illinois—

16,655. (Chairman.) Would it be inconvenient to finish this to-morrow?—Not at all; I can come to-morrow. I kept to-morrow open purposely.*

16,656. Because these details are very valuable, and I do not want to hurry you?—I should feel rather pleased to go on with it to-morrow instead of to-day.

Adjourned.

Winchester House, St. James's Square, London, S.W.

TWENTY-FIFTH DAY.

Tuesday, 7th June 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace The LORD ARCHBISHOP OF YORK.
The Lady FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
Sir LEWIS T. DIBDIN, D.C.L.

Sir GEORGE WHITE, M.P.
His Honour Judge TINDAL ATKINSON.
EDGAR BRIERLEY, Esq.
The Hon. HENRY GORELL BARNES (*Secretary*).

Mr. JOHN ARTHUR BARRATT recalled and further examined.

16,657. (*Chairman*.) We had got to the letters which you had received from your correspondents in the United States.* You had called attention to one on page 7 and page 8, and you were going to look for one of the letters which objected to publication?—Yes. As I said, all but three of my correspondents, who are from all parts of the United States, seriously object to publication.

16,658. Can you give us the terms in which any of the more emphatic persons write? I like a little emphasis when I have a point I want to appreciate?—On page 18 a correspondent from Indiana says: "It is quite the general opinion that the publishing of details of divorce actions in the newspapers is harmful and that many of our social ills are due to what we call 'yellow' journalism."

16,659. There is a letter on page 37 from Texas, which is one of your newer States?—Yes. "Enlightened sentiment is against the publishing of details of divorce actions in the newspapers. Our leading papers, I am glad to say, refuse to publish these details. However, there is a public demand for the sensational, and that demand is pandered to by our 'yellow journals'."

16,660. Is that the general tone of 14 out of 17 replies?—Out of about 20 replies, now.

16,661. More than 14 object?—Yes.

16,662. I do not want to weary you or waste time by going through each of these, but we may take it that the great bulk of opinion is against the publishing of any details?—It is. I come to the summary of these letters later on in my proof. I think, before going further, I ought to call attention to the evidence given yesterday with reference to jurisdiction in divorce and domicile. My learned confrere states "It is the universal rule, however, that jurisdiction in divorce is governed not, as in England, by the domicile of the husband, but by the residence for a stated period of one or other of the parties." He goes on to say that "there must be an actual and not a mere legal or constructive residence. It imports a physical sojourning higher than is implied in a transitory visit, and less than that which is required to constitute a domicile." During an experience of 30 years' practice in this law, I have found no respectable authority in the United States supporting that proposition. It is contrary to the rules laid down by the two great writers on divorce, Mr. Bishop and Mr. Nelson, and the weight of authority throughout the United States is to this effect, that the word "residence" in divorce statutes is equivalent to domicile. Nelson on divorce, section 40, says "the residence required must be nothing less than that which is implied in the term 'domicile,' and the correct interpretation of our divorce statutes would seem to require proof of domicile during the required length of time." Mr. Bishop is to the same

effect. The case of *Andrews v. Andrews* in the United States Supreme Court holds distinctly that it is necessary to prove domicile as distinguished from residence in order to acquire jurisdiction in a divorce action.

16,663. I think that is a difficulty you have to deal with more in America than here?—That is a statement of law which may lead to very great difficulties, and that is the trouble with many of these American divorces. The parties have been advised by careless lawyers that all they need do is to reside for 90 days or 6 months or a year and get a divorce and come home without having established any real domicile.

16,664. "Domicile" in the sense of an intention to remain?—Yes, intention to remain, domicile in the English sense. That has been held throughout by the United States Supreme Court, and particularly in *Andrews v. Andrews*. I fear that reliance upon any such statement of the law of divorce in America will lead to divorces that will undoubtedly be held void. On this point I would like to read you one of these letters from one of the States where divorce is most frequent.

16,665. Which is that?—Nevada, on page 30, from Mr. C. L. Harwood, referring to the number of people who go to Reno, which is "the so-called 'Refuge of Restless Hearts,' as it has been named by a writer in one of the popular magazines, and the town and the divorce colony here are the constant subject of newspaper and music-hall jokes, and the town and the people of more or less note from other places, who are here ostensibly for the purpose of securing a divorce, are the constant subjects of Sunday newspaper stories. Of course there is no doubt that many of the people who have come here, and who have secured divorces, and many of those who are here now, have come for the sole purpose of being relieved from the marriage relation. Their residence here has not been and is not *bona fide*, and these people are guilty of fraud upon our courts, and the decrees which they have obtained are worthless both here and in any other court in this country or in England, where the decree might afterwards be questioned."

16,666. That is to say, the true view, even where there is a difficulty in America, is that a true domicile must be acquired, and not one temporarily acquired for the purpose of getting the decree?—Exactly so, and the word "residence" in divorce statutes is to be read and construed the same as "domicile."

16,667. Why, if so, do they put in a limit of time, because "residence" means a permanent residence?—It means it must be at any rate a personal residence in that State for a certain number of months.

16,668. With the intention of going to remain always, in the sense we use?—Yes. The trouble has been that careless lawyers have advised people it is only necessary to acquire this residence, and not the permanent domicile which the courts have laid down is necessary to found jurisdiction in divorce.

* See App. XII. A. and B., pp. 91 and 95.

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16,669. That is a point which concerns your country rather than ours, but it is quite right to mention it?—Yes.

16,670. We now proceed with page 16 of your proof, I think?—I promised to point out, for the benefit of the Commission, the places in the census report where the Commissioner sums up the requirements in the different States for making records of marriages. Those occur beginning at page 182, and going through to page 200, where it is shown that there are practically no reliable statistics on marriage throughout the United States except in about 8 States of the 50. I also promised to point out where it stated in the report that the statistics were statistics of separation and nullity, as well as divorce, so that the apparent number of divorces is enormously increased. That is on page 264 of the volume.

16,671. So that the total we have had of one in so many marriages includes the nullity and separation orders?—It does. The Commissioner says, "In the statistical section the word 'divorce' is loosely used "to cover not only true divorces—that is, dissolutions "of existing valid marriages, but also judicial separations, and in some States because of a lack of discrimination of terms in the statutes and in the court "records, decrees of nullity." I do not know whether the records of other countries do the same. If we have records of so many English divorces to marriages, my notion is that in the statistics in England they will be true divorces, and that they do not include judicial separation and annulment, although I may be wrong. The statistics in the American census give a wrong idea of the number of absolute divorces.

16,672. I think you had got to the end of those who were against publication, in the middle of page 16 of your proof. The next point is "18 state that the "common practice," and so on?—"18 state that the "common practice is trial of such causes in open "court, though in all cases except one there is power "in the court to hear the action privately."

16,673. Is that general all over the States?—Yes.

16,674. In every class of case of this character?—Yes. There is one exception, one State where it is not permitted. I forget which one it is, but you will find it in the Appendix. In 8 cases their opinion is that the existing divorce laws do not tend to a lack of respect for the marriage tie, and in 11 cases that they do not lead to hasty marriages, and in 6 cases opinion was divided. Mr. Lawrence, President of the Cleveland Bar Association, says:—"The only explanation of the seeming paradox must be found in "the deep-seated regard for the family relation, and "the feeling against immoral conduct which still "exists among the great mass of American people, notwithstanding some flagrant instances to the contrary "which occasionally occur, and which, according to "our custom, usually receive the most sensational "publicity." Mr. Lawrence's letter is in the Appendix, and is a very excellent discussion of the subject. I think that must be in the later letters that were to have been printed, but have not been printed.

16,675. I am afraid I have not it?—That is the wording of his letter.

16,676. What State is that?—Ohio, City of Cleveland. That is one of the letters I sent after these went to the press.

16,677. I have only two, one from Broadway, New York, and one from Tennessee. However, that is the quotation?—I think I am wrong in giving you the name. It is on page 34, the letter is from Mr. Lawrence, not Mr. Shearer.

16,678. That is not Mr. Shearer?—I think that letter is worth quoting, a part of it, at least, if I may read it. He says:—"It is not my own view, but I believe it is "the view of a majority of the people in this city"—Cleveland is the greatest city in the State of Ohio—"that where husband and wife cannot live in some "degree of harmony they are better separated, and, "if separated, that an absolute divorce is better both "for them and the public. The consequence of this "feeling is, in my opinion, a loose interpretation by "the courts of the statutes upon the subject, and the

"frequent granting of divorces on insufficient evidence. "For the most part suits are uncontested, and I believe "that practically anyone who wishes for a divorce can "obtain it. It appears to me, however, that this "situation has not as yet produced a lack of respect "for marriage, or tended, in any marked degree, "to hasty marriages, although I confess that the opposite of this would naturally be expected. The only "explanation of the seeming paradox"—

16,679. That is the passage you have just read?—Yes—"must be found in the deep seated regard for "the family relation, and the feeling against immoral "conduct, which still exists among the great mass of "the American people, notwithstanding some flagrant "instances to the contrary which occasionally occur, "and which, according to our custom, usually receive "the most sensational publicity. After all, divorces "are not relatively so frequent as would seem, because "the statistics are based on the number of divorces "granted compared with the number of marriage "licences, whereas in a rapidly growing city a large "proportion of marriages occurred elsewhere. In my "personal association with people I meet very few "persons who have been divorced, although I do not "avoid such persons." That, I am sure, expresses the general view in all the great centres in the United States, that you do not find in your experience that any appreciable proportion of your friends are persons who have been divorced. It again brings us back to that question of the fallacious, apparently, conclusions drawn from the census report as to the proportion of divorces to marriages.

16,680. Do you regard the matter from somewhat the same point of view as Mr. Crane, that there is a very high standard of morality in the States?—I do; indeed, I am convinced of it, from residence in both countries and 30 years' experience I have no doubt whatever that the standard of morality throughout the United States is as high as it is in England or in any other civilised country.

16,681. What is your general explanation—you have more or less given it, but I want to concentrate it—of the number of divorces that occur. Are they largely unconnected with morality, and for cruelty and desertion?—Largely. A large number of them is amongst the poor and those who have emigrated to the United States. Some of them come to settle from England, and during this period we are dealing with in the census report, "which is the period of the greatest "development of the United States and the greatest "influx of the foreign population," thousands of men have left Europe to settle in America, many with the hope of sending for their families. They have found, many of them, that they were unable to send for their families and they have not communicated with them, and in course of time they meet someone else and marry them. I find unfortunately in many cases, so far as English people are concerned, what the man does is this; he starts an action for divorce, he has taken great care not to know where his wife is, he makes an affidavit that he does not know her last address, gets an order for publication of the summons or writ in the newspapers, and six weeks after that under many of the statutes he may proceed with his action. By deceiving the court in that way he gets a divorce. He either says nothing to his friends in England or sends word that he is divorced.

16,682. Is that the class of case we have heard, where, looked at from the English side, they have deserted to America?—Yes.

16,683. Are those very numerous or not?—I have found them very frequent.

16,684. In England at present there is no relief for the person left behind unless they can prove not only the desertion but the fact of living with someone else in America?—Exactly.

16,685. Do you think it right to remedy that by giving proof of desertion only as a ground?—I should, most decidedly.

16,686. To what extent does that prevail, I mean what I may term "desertion cases"?—All I can say is it has been most frequent in my experience since I have been in England for the last ten years. The large

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proportion of American divorcees are of that sort. Then you also find cases where the man sends for his wife and she has become settled in her habits in the old country and cannot give them up, and writes out to say "I cannot stand the climate in America; I cannot follow you there." By American law that is desertion by the wife. The husband writes to her to come out and says he has a home, and she writes back she cannot go out and begin life in a new and strange country, and does not. That is a good ground for divorce in most of the States. I think another cause for divorce in the United States is the enormous development in the employment of women in every kind of business throughout the country. It has thrown the sexes more and more together, with more danger to both, and while I must say the proportion of divorces amongst such is small, still it does add to the large number of divorces throughout the United States very considerably.

16,687. I think you have given some of these points already?—Yes. Another is the very frequent custom in the United States for people of moderate means when they first start married life, to live together in some boarding-house or hotel. The man is away most of the day and the women are thrown in contact with others in the same house, and I am sure many such cases lead to divorces.

16,688. Is that the kind of case which in England goes by the name of "the lodger case"?—It is a little higher grade than that, a very great deal higher, because many Americans of good position among the working class of people,—the business class, not only the working class, live in that way. I have known persons now quite rich, having come to New York years ago, very nice people, and yet they joined together with half-a-dozen families in some other house and lived in that way. Those are some of the causes that lead to divorce.

16,689. You proceed with the question of intervention at the bottom of page 16?—In two cases there is a public officer with authority to intervene on behalf of the State in divorce actions, and in two others the court may appoint special counsel to defend. In Wisconsin the Act of 1909, section 2360—you will find that statute set out in full on page 41. That is the best illustration I can give you of a practical enactment of the model law suggested by the Divorce Congress. On page 44 is the section which provides for the appointment in each county of the State of some reputable attorney of recognised ability and standing at the Bar, as divorce-counsel for each county, and the duty of that counsel is to appear in all actions of divorce. It says in section 2360h (2), "No decree in an action to affirm or annul a marriage, or for divorce, shall be granted in any action in which the defendant shall not appear, and contest the right to a divorce in good faith, until such divorce-counsel, or the divorce-counsel of the county in which the action is tried, shall have appeared in open court and on behalf of the public made a fair and impartial presentation of the case to the court and fully advised the court as to the merits of the case and the rights and interests of the parties and of the public."

16,690. I do not want all the detail of that, but there is in that particular State some check on people petitioning and getting their case through without it being watched?—Yes.

16,691. You regard that as a useful institution?—Yes.

16,692. It does not prevail except in one or two States?—That is all. It prevails in four States. There is some kind of intervention in four States.

16,693. Then I think you can proceed?—In most cases the large proportion of divorces is amongst persons of moderate means, as that is the largest class in the population. But in Chicago poor people constitute 60 per cent. of divorce applicants. The cost of procuring a divorce ranges from 2*l.* to 10*l.* in undefended cases, for poor persons, though in one case, Nevada, it is put at 30*l.*, and in Pennsylvania about 20*l.* You will find in the Appendix they have dealt in each State with the average cost. In Indiana it is exceedingly small. The cost of procuring a divorce is 25 to

50 dollars; that is 5*l.* to 10*l.* The law court costs 15 dollars, and the attorney's fee for poor people would be 10 dollars and upwards; so that a poor person in Indiana can get a divorce for about 5*l.*, if necessary. The fees vary throughout the States from that figure up to 100*l.* or more, and then, of course, with rich people, any amount of fee the attorney sees fit to charge. Then I have also addressed letters to several of the Legal Aid Societies, as I suggested yesterday. These societies, in Boston, Chicago, New York, Philadelphia, and Pittsburg, are societies formed for charitable purposes; they give legal assistance and advice to poor persons. It is a remarkable fact that in Pennsylvania, where divorce is expensive, we have the expression of opinion I quoted yesterday on page 8, that the most distinguished social workers there declare that in their opinion a considerable number of persons are living in open adultery because they cannot afford the luxury of a divorce. Many of them cannot afford to apply for a divorce. On the contrary, in New York you will find at the end of the letter of Mr. McGee, at the top of page 7, "The laws of New York offer the possibility of relief to even the poorest, although the grounds for which an absolute divorce may be obtained, seem to me unduly restricted."

16,694. Is it expensive in Pennsylvania?—Yes, the average cost is \$100 in Philadelphia, and the average cost is \$100 for attorney fees alone in Pittsburg, and the official fees of court are put down in addition.

16,695. That is the view of your correspondents as to the consequences. There is open adultery because they cannot get divorce?—Yes. I put the same question to the people from Boston, and they say the attorney fee for poor persons is 5*l.*, and the court costs \$9; that is under 2*l.* The poor in Boston who can afford to pay can get a divorce for 7*l.*, and if they cannot afford it the Legal Aid Society will take up the matter for them. There seems a great deal of separation in Boston, where the parties are not divorced but simply apply for separation orders. The correspondent on page 3 says: "In such cases the possibility of securing a divorce for her cheaply is of great value to her and her children." Then one correspondent, Miss Alice Higgins—she is the secretary of the Associated Charities of Boston—says in her letter on page 4: "I talked with the secretaries yesterday. There was a large attendance, covering the whole city, and only two instances were cited where we know of a man and woman living together illegally, because, owing to poverty, they could not get a divorce."

16,696. Where is that?—In Boston. "And in one of these it is doubtful if that is the reason. In my own personal experience with poor families I can only recall one instance, and when I offered to help the woman get a divorce in order to legalise the present situation the couple disappeared."

16,697. Is it fairly expensive in Boston?—It is quite cheap, under 7*l.*, even if you can afford to pay, including court costs. These are undefended cases, of course. Several of the correspondents point out that it is not loose divorce laws, but loose marriage laws which constitute the gravest evil. This is also the opinion of Professor Howard, the great authority on divorce history in the United States, whose views of the causes of the increase of divorce and the remedies therefor are summarised as follows:—Causes: (a) Absence of uniform law; (b) Bad administration of existing law; (c) Growing spiritual liberation of the individual in family life, women becoming more independent; d) Realisation that increasing grounds of divorce means rising social ideals of what the family life should be, e.g., use of narcotics, destructive of family life. I understand his argument to be this: Because the ideals of marital happiness are so high in the United States, these laws are enacted to enable people with those high ideals, when the other party does not live up to them, to become separated and divorced; for instance, he gives cases of those who are addicted to drugs and narcotics. A man or woman addicted to that habit, as a person addicted to drink, is no more keeping the marital contract from the point of view of these persons who have high ideals

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in family life than the persons who commit the worst offences against family life.

16,698. Would your view be that the higher the standard of marital life becomes the more will be the extended grounds of divorce?—I do, decidedly.

16,699. Because each party will expect the other to come up to the higher standard, and will not be satisfied unless they do?—That is exactly my idea, and that is one reason for the large number of causes of divorce throughout the United States. They have come to an idea that the low standard of only one cause for divorce is utterly destructive of any high ideal of family life. If you believe you should treat each other properly throughout life, and live a proper life in every way, a violent and ungovernable temper, vile slanders, use of drugs, getting constantly drunk, or becoming imprisoned, are all breaches of the marital contract from the point of view of persons having the higher ideal of life.

16,700. You do not agree that the widened causes tend to lower the standard of morality?—No.

16,701. Can you amplify that, to show us how you arrive at that?—I do not know that I could describe it better than I have, and that is this: It has long been the view throughout the United States that mere marital infidelity is only one of the things that should bring about a dissolution of the marriage. People ought to have a higher ideal of married life than that; they ought to believe the treatment of each other should be of the very highest type; they are married for better or worse. A man should not destroy his family happiness by coming home every day of the week exhibiting ungovernable temper, neither should a woman. A man should not destroy his family happiness by becoming drunk every day of the week, nor by taking drugs and narcotics. That is just as destructive of the high type of married life as the grave offences, and very much more often productive of unhappiness. One can imagine in many cases mere marital infidelity does not bring about an enormous amount of unhappiness in the daily life, not so much as a man or woman who makes life not worth living by an ungovernable temper. The American notion of divorce is based on those grounds, that either party should have the right to dissolve the marriage if either party falls below those ideals by being guilty of the various things I have described.

16,702. You have not defined all the causes Mr. Howard mentions?—The last is: "Bad marriage" laws allowing the marriage of the insane, diseased, "and morally degenerate." A number of the States have statutes which I refer to later on.

16,703. What is the remedy he suggests?—The remedies he suggests are:—(a) Passing the model law; (b) Stricter enforcement of the law; (c) Education by parents and others to higher ideals of marriage relations; (d) Forbidding the marriage of the unfit, moral degenerates, inheriting tendencies to disease and crime; (e) More efficient moral, social and physical training of the young. Mr. Howard is a great authority on divorce.

16,704. Will you assist me on this point: the passing of the model law is rather a restriction on a good many of the causes that already exist?—Yes.

16,705. How does that fit in with your suggestion that the more numerous causes tend to elevate the moral standard?—I take this model law to be a compromise. My views would be those which I have stated, and I think my views would be those of very many members of that Congress, though it was not possible to get all the members to agree. The only causes they could all agree upon were those stated in the model law.

16,706. You deal next with the courts that administer jurisdiction?—Yes. Divorce jurisdiction is exercised in the United States by the Supreme or Superior Courts for each State, and there is such a court usually sitting in each county of every State, though in sparsely settled counties the judge may sit for more than one county. So that litigants have the same facilities for bringing actions for divorce as they have for bringing any civil action in a Superior Court. In New Jersey there is but one court for divorce, which sits at Trenton, the capital, which is only about 80 or

90 miles from the remotest corner of the State, so that even that court is accessible. That the prevalence of divorce in the United States does not show a lower standard of morals in the community is shown by the opinions of three unprejudiced writers who expressed their views at totally different periods of American history. De Tocqueville, the great French writer, said 75 years ago—"Assuredly America is the country "in the world where the marriage tie is most respected "and where the highest and justest idea of conjugal "happiness has been conceived." The reference to that is, "La Democratie en Amerique," volume 2, page 215, and it is referred to by Howard, volume 3, page 252.

16,707. (*The Archbishop of York*.) That was before divorce legislation at all?—No, not before divorce legislation. We had divorce legislation in several Colonies of the United States in 1777, 1786, 1787, and 1791. Professor Lecky, much later than De Tocqueville, says: "It is remarkable that this great "facility for divorce should exist in a country which "has long been conspicuous for its high standard of "sexual morality and for its deep sense of the sanctity "of marriage." The reference to that is "Dem. and Liberty," volume 2, page 208; "Howard," volume 3, page 252.

16,708. I forget the date he published that; it is some time back now?—It is between De Tocqueville, 75 years ago, and Mr. Bryce, whom I am going to quote now. Mr. Bryce, the present Ambassador to the United States, says: "So far as my own information "goes, the practical level of sexual morality is at least "as high in the United States as in any part of "Northern or Western Europe (except possibly among "the Roman Catholic peasantry of Ireland). There "seems no ground for concluding that the increase of "divorce in America necessarily points to a decline in "the standard of domestic morality, except perhaps, "in a small section of the wealthy class, though it "must be admitted that if this increase should continue it may tend to induce such a decline." The reference is "Studies in Hist. and Jur.," 850: Howard, volume 3, page 252. Then Commissioner Wright himself, who drew up the last report, the last census report, not the present one, says: "I do not believe "that divorce is a menace to the purity and sacredness "of the family; but I do believe that it is a menace to "the infernal brutality, of whatever name, and be it "crude or refined, which at times make a hell of the "holiest human relations. I believe that divorce "movement finds its impetus outside of laws, outside "of our institutions, outside of our theology." That is in Howard, volume 3, page 252.

16,709. Can you give us the date of that?—That certainly would be the date of the last census report.

16,710. Before 1887?—No. It may be since that time.

16,711. (*Chairman*.) The last census was 1906?—I am referring to the previous one, 1880.

16,712. Is there much change from 1886 to now?—In the causes of divorce in the United States?

16,713. Yes?—Very little indeed.

16,714. (*Sir Lewis Dibdin*.) In the amount of divorce there has been a great increase?—There has been a steady increase, as there is in every civilised country in the world. "While the divorce rate in the "United States is high, the marriage rate, in proportion to the marriageable population, is higher "than in any of the western nations of the world, "excepting Hungary and Saxony." That is in the census report, page 11. "Several States of the United "States have adopted stringent laws as to marriage, "so as to prevent the marriage of persons deemed, by "reason of disease or inherited tendency, unfit for "marriage, such as epileptics, imbeciles, paupers, &c., "e.g., Delaware, in 1899, for all persons afflicted with "certain loathsome diseases from contracting marriage "under penalty of heavy fine or imprisonment for "five years. Either the husband or wife, or the "attending physician, can be compelled to testify to "the facts. Minnesota, Connecticut, and Kansas "prohibit marriages of epileptics, imbeciles, and "feeble-minded, also those afflicted with insanity

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" (Howard, volume 2, page 480). Humane laws for " the legitimation of children by the subsequent " marriage of their parents have been enacted in most " of the States; in some, only when the father has " acknowledged or recognised the child as his own " (' Stimson's Statute Law,' section 6631.) "

16,715. (Chairman.) Is there not one of the States which has given stringent powers to the medical authorities?—That is Delaware.

16,716. Is that referred to here?—In my proof I say that either the husband or wife, or the attending physician, can be compelled to testify to the facts.

16,717. I thought there was stronger legislation than that. I noticed it in Mr. Howard's book. I dare say we may refer to the book?—I refer to that page in Howard; my statement is quoted from that.

16,718. I will not pause to look at it. I will get the passage I was thinking of later?—Then with regard to legitimation, I consider that is an important provision in the divorce statutes in the United States. Because many people do get married after contracting irregular relations, the law certainly ought to be such that the children of that relation by a subsequent marriage should be legitimised, if recognised.

16,719. Is that the rule all over the States?—It is in many of the States. It will thus be seen that enlightened opinion in the United States, both in and out of the Church and legislatures, is fully alive to the necessity of safe-guarding the marriage relation and regulating the causes for, and procedure in, divorce. But with such a conglomerate nation, consisting in part of millions gathered from all parts of the world, each having their own notions on this important subject, it must be recognised that uniformity of legislation is as difficult as it would be to bring about the same uniformity throughout the British empire. Nevertheless, the strongest efforts are being made to bring about this uniformity by the enactment in the several States of the model law recommended by the National Congress on Uniform Divorce Laws. Three States have already enacted it. But in a country having about 50 separate legislatures, such matters proceed slowly, as they do in any country in the world. Frauds practised upon the court and perjured evidence will, I fear, exist in all countries in divorce actions. But courts throughout the United States are ever ready to re-open decrees in such actions when the fraud is brought to the attention of the court. The principal ground of fraud is in false declaration as to the domicile of the plaintiff, when he or she has not acquired a *bonâ fide* domicile before beginning action. I have elsewhere advocated one remedy for such an evil. I wrote a paper on jurisdiction in divorce, and read it before the International Law Association in Berlin and also in Portland, Maine, in which I called attention to this, that in all divorce actions the State should be made a party and represented by counsel. Before allowing the writ to issue against the defendant the court or the States counsel should have power to investigate the facts as to domicile. I think also that a copy of the petition for divorce as well as a copy of the decree should be entered in the office of the Secretary of State of each State, and that a note of the decree should be entered upon the original marriage record. One difficulty we have in the United States is this: Referring to those Englishmen who get divorces in America, where the wife only hears after the business is over that she is divorced, there is no way of finding out in what court she has been divorced without a search of the records of every county in all of the States and territories of the United States, which is practically impossible.

16,720. You think there should be a public register of the decree?—In the Secretary of State's office—and I advocate a central registry in Washington—there should be a central registry, where all divorces granted throughout the United States, as well as all births, marriages, and deaths, should be recorded. There would then be many less opportunities for fraud, and many actions would be defended which are now left undefended because the defendant never hears of the case until it is all over. I think divorce decrees

in all civilised countries should be entered in some central registry, open to all persons for a small fee, and that the decree should not be deemed final until it is so registered in whatever court the same may have been rendered. This alone would prevent a great deal of fraud. Various reasons are given by different authorities for the increase in divorce, and different remedies therefor. Mr. W. G. Smith, a leader in the United States National Congress on Uniform Divorce Laws, thinks the increase " has " come partly, no doubt, by reason of the gradual " weakening of the ties of religion, and partly by " reason of the growing tendency towards indivi- " dualism marked by the destruction of the fiction " of the law that husband and wife are in many " respects but a single juridical person, and by the " gradual recognition of women's right to the owner- " ship of her property whether acquired by her " labour or by inheritance." He also thinks it is due somewhat " to a gradual weakening of religious faith, " which has resulted from the loss of the old ideal of " duty as the main purpose of life and the frank " substitution of individual pleasure in its stead." The Rev. Samuel Dike, LL.D., another great authority, thinks it is due partly " to the neglect of the " Churches to develop the religious resources of the " home. . . . The Church as a whole is not " awake to the need of concentrating attention on " the home in order to secure those high ideals of " marriage and family life, that need of personal " sacrifice of individual ambition to domestic and " public interests, and that purity of physical being " that is essential to happy and fruitful marriage. " The Church does not yet see that it can inspire the " home to that conduct and to those virtues that are " the surest protection we have against poverty, " ignorance, vice, and crime. It has not yet learned " to set apart some definite percentage of its charit- " able funds to promote the interests of the home. " No revival is more needed than the revival within " the Church itself of a sense of its obligation to do " vastly more than it now is doing for the home." Here is the most pressing work before us.

16,720a. Who is the Rev. Samuel Dike?—He was the secretary of the National League for the Protection of the Family.

16,721. Is he in New York, or where?—The headquarters are in Boston.

16,722. Massachusetts?—Cambridge, Mass., or Boston. The Hon. Seth Low, who was formerly president of the Columbia University of New York, was formerly president of that society. " I think also " another cause is in hasty and ill-considered mar- " riages of very young people, and laws making the " marriageable age too low. I think also some pro- " vision should be made for judges seeing both parties " together with a view to reconciliation before per- " mitting the writ to issue in a divorce action." Then I summarise the leading features of these replies printed as an appendix.

16,723. That is very convenient?—Do you care to have that?

16,724. Yes?—Some leading features in the replies to my questions by the various judges and presidents of Bar Associations, may be stated as follows: "(1) (a) " There seem to be few desiring a change in the " existing law. (2) Attitude towards those who have " left the State to get divorce in an 'easy divorce' " State, is in some cases hostile and in others in- " different, but in most cases people do not leave the " home State for that purpose. (3) The tendency to " divorce seems in most cases to be increasing, but is " decreasing in North Dakota, and is not increasing in " Virginia, Nevada, Louisiana, and Connecticut. I " must refer to the present census report, which rather " differs from the conclusions of these correspondents, " in those particular States, because the census report " of 1906 (of course, that is four years ago), says in " North Dakota, Virginia, and Louisiana it increased, " but in Connecticut it decreased. (5) In most cases " the decree is final, but the decree nisi is being adopted " gradually. (6) In Chicago, Judge Dupuy says the " wife in his court was plaintiff in 78 per cent. of the

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"cases. In some cases she is plaintiff through the husband's gallantry. (8) Formerly in South Dakota the practice of citizens of other States resorting there for divorce, did lessen respect for the marriage tie. In Nevada it does not. In almost every one of the other 18 States heard from the correspondents, say that the citizens of other States do not resort elsewhere for divorce." That corresponds with the census report, and it also gives the direct denial to one general view, and the view adopted by the Divorce Congress, that one cause for the great number was in the migration from one State to another.

16,725. I think you have fully dealt with that point?—These correspondents bear that out. This agrees with the Census Statistics and Professor Howard's views, thus proving "migratory divorces" are not as numerous as was supposed. (9) One correspondent thinks those divorced should not be permitted to re-marry, but he cannot defend his views. Another says the majority of women in his State (North Dakota) are not divorced to re-marry, but to be protected from cruel or deserting husbands. Many advocate safeguards around the marriage laws rather than amendment of the divorce laws. Judge Allen of North Dakota says, "My experience has taught me that a great majority of those suing for divorce were married in haste." Mr. Storey, President of the Bar Association of Boston, says, "I am inclined to believe that divorce laws are wise, and that nothing is gained by preventing the separation of persons whose life together is unhappy." Judge Windes, of Chicago, says, "I am opposed to divorces generally." Judge Dupuy, Chancellor of the Superior Court in Chicago, says, "I have presided at the trial of many hundreds of cases and do not believe that many divorces are granted when the interests of society demand that they be withheld." He states that he tries "about 20 divorce cases per week throughout the year." President Lindley of the San Francisco Bar Association, says, "I have no criticism to make of our divorce laws. I have, however, of their administration. In some courts the law is too loosely administered. This is a temperamental difficulty which legislation cannot obviate." Judge Carland, of the Federal District Court in South Dakota, says, "Mankind ought to be taken as it is, and not as it ought to be, and a reasonable liberality in granting divorce is productive of more happiness than otherwise." Mr. W. G. Smith, of the United States National Congress on Uniform Divorce Laws, advocates the model law in order to prevent fraud and remove divorce for trifling causes. The replies from the Legal Aid Societies of New York, Boston and Chicago show that there are very few cases in those great cities of persons living together immorally because of the cost of a divorce suit being too high. I must except, of course, Pittsburg. The secretaries of the Associated Charities of Boston reported that only two such instances had come under their observation. The cost to a poor person in an uncontested divorce may be as little as 5*l.*, and the Legal Aid Societies in cases of great hardship make no charge, the court costs being under 2*l.* There are many cases, however, of "separate support" decrees being granted amongst the poor in Boston, the expense being not more than 3*l.* to 5*l.* for legal services, and the court costs nil. The reports show that there is no great increase in divorce amongst the poor. The court costs in the cases undertaken for poor people by the Legal Aid Society in New York for 1907-8-9 averaged under 30*s.* The costs of persons of moderate means, who are a large proportion of those seeking divorce, is reported to be about \$100. Mr. McGee, the attorney for the Society, says, "The laws of New York offer the possibility of relief even to the poorest, although the grounds on which an absolute divorce may be obtained seem to be unduly restricted. Personally I have no doubt that there are many lawyers in New York who would undertake divorce actions for poor persons for a very modest fee, say from 5*l.* to 10*l.* One knows there are plenty of men who would charge no fee at all to exceedingly poor persons, and the court costs

"are practically nothing in New York. I should say they average under 30*s.*" Mr. Blake, the attorney for the Legal Aid Society of Chicago, says, "There are many lawyers in this State who, through one cause or another, are glad to handle these small matters," *i.e.*, divorce for the poor. So that the condition does not exist in Chicago of persons living together immorally because of the cost of a divorce. In Philadelphia, on the other hand, the cost of divorce seems to be very high, ranging from 15*l.* to 20*l.* court fees alone, exclusive of lawyers' charges. Mr. Holland, the attorney for the Legal Aid Society there, says, "It is undoubtedly true that the costs of obtaining divorce do prevent many poor people from securing such relief." But it does not occur in very many cases. He is "inclined to believe that where the injured person is really desirous of obtaining a divorce he or she can find the money to do so." The Secretary of the Legal Aid Society of Pittsburg reports that the court costs range from about 3*l.* 10*s.* to 5*l.*, and that lawyers' charges in addition are about 20*l.* He further says, two of the most experienced social workers in Pittsburg, advised him that it is their opinion "that a considerable number of poor persons are living in open adultery because they cannot afford the luxury of a divorce." He thinks divorce is stationary amongst the lower classes, and apparently has increased largely among the well-to-do; but this may be "an error resulting from the greater notoriety attached to the divorces of the well-to-do." Even in Virginia, where the coloured population is very large, Mr. Welford, the President of the Bar Association of Richmond, does not think there are many cases of illegal relations due to the cost of divorce, "which is very small." "We have a class of divorce lawyers who take such cases at almost any price." This sufficiently shows the diversity of views existing throughout the United States, and with the following extracts I close my evidence. A writer in *Law Notes* says, "Human nature being as it is, sexual irregularity, with its far-reaching, evil consequences, is especially likely to result from making it unreasonably difficult for mismatched couples to rid themselves of the bond by which they are legally, but only nominally, united." "We have the example of South Carolina, where not a single divorce has ever been granted for any cause. The legislature of this State has found it wise to enact a law providing that a man shall not will more than one-fourth of his estate to a concubine."

16,726. One-third, is it not?—No. The statute now says one-fourth.

16,727. Since when was that altered?—In 1893 it was one-fourth. So that the entire absence of a divorce law in that State is far from conducing to a higher moral tone in the community. A leading woman lawyer in Chicago is quoted in the *Springfield Republican* as saying: "At large, I should be inclined to ascribe the increase in divorces during the past 40 years to the growing economic independence of women and to the relaxation of religious restrictions. It is now possible for a woman to make her way in the world, and she is not obliged to submit to the kind of domination that was once her portion. The better education of women also has undoubtedly played its part in establishing them upon a more independent plane and increasing their freedom of action." Mr. Justice Brown, of the United States Supreme Court, has given a good deal of attention to this subject.

16,728. He is one of the most distinguished members of the Bar?—Yes. He was on the Supreme Court bench for many years. In a recent address he stated seven causes for divorce which are recognised in most of the United States. I will read the seven causes he suggests. His causes are as follows, causes he thinks ought to warrant divorce:—(1) Habitual intemperance, more or less incapacitating. (2) Extreme cruelty, sometimes physical, sometimes also mental. (3) Conviction of crime, and consequent imprisonment for a greater or less period, with different limitations. (4) Desertion and abandonment for a number of years. These and adultery are the sole grounds for divorce in New Jersey. (5) Neglect to provide for one's family,

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(6) Hopeless insanity; he says that is a cause for divorce in California and Florida, but those statutes have been repealed. It is a cause in Idaho, Maine, Utah, and Washington (App. XII. C., p. 115). (7) Pregnancy of wife before marriage in Alabama, New Mexico, Oklahoma, Tennessee, Virginia, and Mississippi.

16,729. Do you know the causes for repealing the insanity laws in those two States?—My explanation of that is this. In Florida I know there was a great scandal. The first statute in Florida providing insanity as a cause for divorce was said to have been passed through the efforts of a very wealthy man whose name I will not mention. His wife was suffering mentally, and shortly after, he got a divorce from her in Florida. She subsequently recovered her reason, and there was a great agitation throughout the United States against this whole business, and the result finally was that Florida repealed that statute. I imagine California probably repealed it for the same reason (*see App. B.*). That was the cause for the enactment of the first statute in Florida, and also the cause for the repeal in that State. Mr. Justice Brown said: "Who shall say that the existence of any one of these causes may not strike at the root of the marriage relation, defeat the very object for which it was entered into, and render it a curse instead of a blessing? Who shall say that this practical unanimity of the 46 States, and of the most highly civilised countries of Europe, should not override the sentimental considerations which oppose themselves to any dissolution of the marriage tie?" I think this expression of opinion by Mr. Justice Brown would be concurred in by the great majority of people throughout the United States. "The laws of Continental Europe do not differ materially from those of the United States." He says, further, "speaking for myself, I can only say that I cannot recall a divorce fairly obtained, without fraud, and upon due and personal notice to the other side, that did not apparently redound to the welfare of the parties and prove a real blessing. If the legislature define the law and the procedure with sufficient strictness it cannot be held responsible if weak judges occasionally overstep the limits marked by the words of the statute." Then the model law of the Divorce Congress recommends these following causes for divorce, which, as I have suggested, are undoubtedly a compromise between the views of the members attending that Conference:—(1) adultery; (2) bigamy; (3) conviction of crime in certain classes of cases; (4) intolerable cruelty; (5) wilful desertion for two years; (6) habitual drunkenness.

16,730. Why do they add bigamy?—I cannot understand why that is, except the suggestion made by your Lordship yesterday, that is, that it is more easy to prove bigamy than adultery.

16,731. I think that is all your proof contains, but there are two or three other points to be dealt with?—With reference to the suggestion made yesterday as to the great many marriages before justices of the peace in the United States, may I say my experience is this, that the persons who go before a justice of the peace in the United States are the same class of persons who would go before the registrar in England, that they are neither more nor less numerous in proportion to the population than persons who would go before a registrar. While some of these justices of the peace who keep saloons are not responsible persons, many are quite respectable people, and I do not believe any appreciable proportion of the marriages in the United States occur before justices of the peace. The vast majority of marriages occur in private houses, and some few in the churches.

16,732. Before whom?—Before some clergyman or some minister, and I am certain that, just as you would have in England people who would go before a registrar, and after the marriage ceremony go round the corner to a public-house and get drunk, of course you get persons of the same class who would go before a justice of the peace and lightly regard the marriage tie. Only an inappreciable proportion of marriages take place before any such persons in the United States. Exaggerated statements lead to a misconception of

the attitude of the people towards marriage. My experience is that marriage is as highly regarded by all classes of the community in the United States as it is in England—quite as highly.

16,733. You agree it should be performed with due solemnity and adequate realisation of its importance?—I do, and in the vast majority of cases—the huge preponderance of cases—it is so. These marriages in private houses are as solemn a ceremony as you could attend, as solemn as in church. I have often seen them, and it is the custom, as I believe it is in Germany.

16,734. In Scotland I believe still by consent, and also very commonly in the private house?—Yes.

16,735. There are two points which are not touched upon in your proof which I should like you to address your mind to. What is the general effect of the legislation in America with regard to re-marriage of the guilty parties?—There are several statutes throughout the United States which forbid the re-marriage of the guilty parties.

16,736. That is with each other?—Yes. My own view is in favour of such statutes. I do not believe in the re-marriage of the guilty parties. I think it is a distinct temptation; in the first place, they find after misconduct it is only necessary to get a divorce, and then they will be able to marry.

16,737. Are there a number of States in which that occurs?—I could not give you the proportion.

16,738. In others it is not restricted at all?—In some it is not restricted. In New York the statute provides that the guilty party shall not re-marry during the life of the plaintiff unless the consent of the court is given after five years from the decree.

16,739. That gives the court a discretion?—Yes. These statutes are penal statutes, as has been explained, and upon the universal principle of law penal statutes have no operation outside the jurisdiction in which they are passed. People do evade those statutes by getting married in other States, and then they come back to the first State.

16,740. The other point upon which I do not find any reference in your proof is this: have you any law of any State with regard to recrimination as a defence?—It is a defence in practically every State.

16,741. Is it a defence which is subject to the discretion of the judge in any way?—In some States the judge is given a discretion, I think, and my view is that a judge should be given discretion in such cases. One can imagine a man has been driven to a certain course by his wife's conduct, and the facts ought to be taken into consideration in each case.

16,742. Your view would not be to make it no bar, as in Scotland?—Certainly not.

16,743. But to leave the judge to deal with any case in which it should be properly brought forward?—Decidedly.

16,744. I think those are all the other points that occur to me?—There is separation, which we have throughout the United States.

16,745. What is the law with regard to judicial separation?—All States have what is called divorce *à mensâ*, and it is resorted to by people who have conscientious scruples against absolute divorce, to a certain extent, but not to a very large extent, I think.

16,746. I was looking at Mr. Bishop's work on that particular point. Is he considered a man of great legal authority?—He is the highest authority on the law of divorce in the United States.

16,747. Is he alive?—No, he died some five years ago.

16,748. He has a very remarkable section on that. I do not know whether you have looked at it?—I have read that section.

16,749. I should like to have it on the note, because I would like to ask you about it. It is section 68 of his book published in 1891. "This proceeding," that is judicial separation, I understand, "neither dissolving the marriage nor reconciling the parties, nor yet changing their natures; having at least no direct sanction from scripture; characterised by Lord Stowell as casting them out in the undefined and dangerous characters of a wife without a husband

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" 'and a husband without a wife': by Judge Swift"—is he an American judge?—Yes.

16,750. —"as 'placing them in a situation where 'there is an irresistible temptation to the commission 'of adultery unless they possess more frigidity or 'more virtue than usually falls to the share of human 'beings': by Mr. Bancroft"—?—He was the historian of the United States.

16,751. —"as 'punishing the innocent more than 'the guilty': by an English writer as 'a sort of 'insult rather than a satisfaction to any man of 'ordinary feelings and understanding'—is, while 'destitute of justice, one of the most corrupt devices 'ever imposed by serious natures on blindness and 'credulity. It was tolerated only because men believed, as a part of their religion, that dissolution 'would be an offence against God: whence the slope 'was easy toward any compromise with good sense: 'and as the fruit of compromise we have this ill-begotten monster of divorce *à mensâ et toro*, made 'up of pious doctrine and worldly stupidity. The 'Protestant Bishop Cozens long ago proclaimed to the 'Protestant nation, in language sufficiently pointed 'against the Catholics to meet all Protestant prejudices: 'The distinction betwixt bed and board and 'the bond is new, never mentioned in the Scripture, 'and unknown to the ancient Church, devised only 'by the canonists and schoolmen in the Latin Church 'for the Greek Church knows it not) to serve the 'Pope's turn the better, till he got it established in the 'Council of Trent; at which time, and never before, 'he laid his anathema upon all them that were of 'another mind; forbidding all men to marry, and 'not to make any use of Christ's concession.'" Then he proceeds with his own remarks: "Yet in the face, 'not only of this testimony, but of all opinions not 'moulded by theological dogma, Protestant England, 'and a large proportion of the States of this country, 'where the tenets of no particular religious sect pervade, our legislation, this divorce from bed and 'board, termed in the modern English statutes 'judicial separation,' this nuisance in the law, is 'suffered to stand unquestioned." Is that the passage you refer to?—Yes. I agree with those views.

16,752. How far do you think that represents the views of the people in America?—I think that would be the general view adopted by most people of any standing, that there is no good purpose to be observed by keeping people tied together for ever during their lives without the possibility of re-marriage, if they are never going to live together again.

16,753. Is that the last point you wish to make about that?—I think in one's experience in the United States you do not find so many people living apart without divorce as you do here, I mean people under a deed of separation, for instance; one hardly ever hears of deeds of separation in one's practice. Occasionally it is so, but there is nothing like the frequency with which one finds it here.

(Chairman.) He winds up with: "Even in Scotland 'it exists; in almost every place where marriage is 'known, this folly walks with her—the queen and the 'slut, the pure and the foul, the bright and the dark, 'dwell together! Such is marriage and its detestable 'part, such is human life!"

16,754. (Sir George White.) I want to understand your emphasis with regard to the statement, which was taken as one of the points of Mr. Crane's evidence by the newspaper—as one would expect it would be—that in 1 in 25 of the marriages in America divorce occurs. I understand you say that is altogether a fallacious statement?—Entirely. The Census Commissioner shows in his Report on the pages I have quoted that the marriage statistics are so entirely incomplete that it is impossible to get at the accurate percentage of divorces. In only eight States out of 50 is there at the present time any complete, or anything like a complete, return of marriage statistics.

16,755. Your reasons for emphasising that are two: one, you now give, that a vast number of marriages are not registered at all?—Yes.

16,756. And therefore, as a comparison with other countries, it is unreliable?—Quite so.

16,757. And the other, that cases of nullity and separation are also included in the divorce tables?—That is so.

16,758. That is not so as a rule in other countries, therefore, the comparison is altogether a fallacious one?—Exactly.

16,759. May I ask how many States there are where coloured people predominate?—I could not tell you; but in most of the Southern States, that is States south of Maryland, there is a very large proportion of coloured people, and in most of those States the number of divorces for the whole State amounts to 50 to 90 per cent., being negroes.

16,760. That is the point I want to put?—You have 90 per cent. negro divorces.

16,761. Where does the marriage of those negroes occur?—They were married, many of them, under the old slave law, where their masters allowed them to live together as man and wife, but there was no record of any such marriage, so that in 90 per cent. of the divorces there would be no record of many marriages.

16,762. They come up to 90 per cent. of the whole divorces in the State?—They do in some of the States. My correspondents show the proportion of divorces amongst the white people in those States is exceedingly small.

16,763. You say divorce is largely increasing?—Yes, as it is in all civilised countries of the world.

16,764. Do you think in the same ratio as in other countries?—Possibly a little larger, for the reason I have described, the large number of emigrants; we have had millions of emigrants during those years covered by this report, and large numbers are persons who would figure in the divorce courts.

16,765. Your knowledge of the marriage laws generally leads you to say that England is practically alone in the limited restrictions it places upon divorce?—Yes.

16,766. In regard to the evidence you gave about justices of the peace, which seems to somewhat contradict the evidence of yesterday, which was rather startling, it is a fact that justices of the peace throughout the States have the power of performing the contract?—That is so.

16,767. That is irrespective of character or circumstances?—Yes, but the proportion of persons married before justices of the peace I am convinced is no greater than that before the registrars here, and probably not so great. I may add in that connection that persons of that kind who would go to a justice of the peace, and disregard the marriage tie so soon afterwards, in England would never get a divorce at all; they would be living in adultery with somebody else, and bringing up an illegitimate family, whereas under the divorce laws of the United States they would get a divorce, and the subsequent marriage would be a legal marriage. Whichever way you put it, the divorce of such persons is not an evil, but rather a good.

16,768. You would lead the Commissioners to understand that marriages before justices of the peace are practically confined to one section of society?—I think so, and very largely to the poorer classes, certainly.

16,769. Your evidence goes to show that the cost of getting a divorce in America is very much cheaper than here, and there is no barrier whatever, as a rule, to the poorer classes obtaining a divorce because of the expense?—That is so.

16,770. That is contrary to your experience in this country altogether?—Quite contrary. In some States it is more expensive than in others.

16,771. (Mr. Burt.) With regard to justices of the peace, are there many of them who are proprietors of saloons?—A certain proportion of them are, certainly, but I think it would be rather impossible to say what proportion. A good number of them would be in the Western States, I daresay, and in the Eastern States many of them are quite respectable persons.

16,772. Is it more common or usual for the marriages to take place at the saloons?—I never heard of such a case in my life.

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16,773. I gather from your evidence that the cost of divorce is really no practical grievance at all in the United States?—No, excepting in one or two of the cities where it is rather expensive, Pennsylvania, for instance. It is expensive there.

16,774. I take it, too, from your evidence that the number of grounds of divorce has practically no great effect in increasing divorces?—I think it has a very slight effect. In that respect I agree with Mr. Howard, the great authority on divorce.

16,775. I gather from your evidence that the divorce statistics are not altogether trustworthy in the United States?—I think the divorce statistics are fairly trustworthy, but the marriage statistics are most untrustworthy.

16,776. And therefore, the marriages being much more numerous than those put on record, the divorce statistics convey a false impression?—Entirely so. I am perfectly convinced that it gives a wrong impression altogether. But the Commissioner who draws up the Census Report points out the very fact I have been pointing out, and gives pages of description of how irregular the marriage statistics are. In each State he goes through them and shows in how few, in fact only eight, there is a regular return of marriages made. One can see how many millions of marriages that must amount to in 20 years not registered at all, not reported at all. In New York State, which has one-tenth of the population of the United States, even now the authorities have the greatest difficulty in getting the Roman Catholic clergy to make returns of marriages. The Census Report so states, p. 195, Vol. 1.

16,777. (*Chairman.*) Why is it specially among the Catholics?—I have no explanation for that, except this; it may be that they wish to compel the persons whom they marry to come to them for certificates at some time later on. I do not know whether it is a little perquisite the priests get in after years. We have had to do that in searching marriage records, particularly in the early days in New York. We have to apply to clergymen and churches because there is no official record. You have to pay for that service. It may be this is a continuation of the old practice in the Roman Church which they do not like to have infringed upon. I do not say it is so, but it may be so.

16,778. (*Mr. Burt.*) I take it from your evidence that you think the large influx of outside population into the United States is one factor in increasing the number of divorces?—I do, because I know many instances of Englishmen who have gone to America for the purpose of divorce and nothing else. That divorce appears on the divorce statistics, but his marriage does not; he comes back to England or goes to Canada or elsewhere, but we get the odium of increased divorce in the statistics.

16,779. (*The Archbishop of York.*) On this interesting matter of statistics you have quite rightly called attention to the limits which the compilers of the Census Report acknowledge, but would you go so far as to say even the marriage returns were quite untrustworthy? I think you even said, in answer to Sir George White, they were utterly fallacious?—I think they are entirely unreliable, with the exception of those eight odd States.

16,780. May I call attention to the words of the Census Report itself in the introduction. Perhaps I had better read what it says on page 4: "When the present investigation was undertaken in the summer of 1906 it was found that only two States, New York and South Carolina, were still without licence requirements. It was consequently decided to obtain, wherever practicable, the number of marriage licences issued, because this number would serve as a measure of the correctness of the figures returned for marriages celebrated. The effort to secure the number of marriages celebrated has met with success in almost all the States and territories; and, moreover, a comparison of the figures for licences where such were obtainable with the figures for marriages celebrated, indicates on the whole that the marriage returns are fairly accurate." You say that is not so?—All I can say in answer to that is this, which I

gave you yesterday in my evidence, that in the State of Pennsylvania alone—

16,781. I do not want to go back into details?—It is quite necessary, because out of so many thousand marriages in one year in the State of Pennsylvania alone there were something like 1,400 for which licences had been granted, of which there were no marriage returns.

16,782. I only want the fact you convey, that the responsible officials in the United States were not justified in claiming, allowing, as they did, for the many discrepancies, that the marriage returns were fairly accurate?—I still think that they are not as accurate as they ought to be, but I think this is a very broad statement; and may I just read what they say prior to what you have read. "In collecting the material for the earlier report no information in regard to marriages was sought beyond a statement of the number celebrated. It was found, however, that even this simple enquiry could not be answered. In most of the States the number of marriages was unknown. In the introductory discussion of the Report of 1889 the statement is made that the Report is 'thoroughly incomplete and unsatisfactory so far as marriages are concerned.'"

16,783. Will you please continue?—"The reason for this incompleteness lay in the fact that many States lacked compulsory requirements for the proper return and record of marriages, while some of the States which had such a requirement lost the value of it because they imposed no penalty for its non-observance."

16,784. Will you go on to the next paragraph. That refers to the former investigation?—Yes.

16,785. It goes on to give the reasons why they were able to obtain better returns for the last years, concluding with the passages I have quoted. You say that the officials of the United States were not justified in claiming that on the whole, allowing for those difficulties, the returns were fairly accurate?—What I think is this. There are a number of the States in which there were no requirements of licences at all, and this statement of the Commissioner refers to the States in which there were requirements.

16,786. The Commissioners say only two States in the summer of 1906?—Yes, that is perfectly true, but this Report covers 20 years before that.

16,787. The figures which are given refer you to the year 1906, which is the last result obtainable, comparing the number of divorces to marriages, applying the conditions of 1906?—It would for that year, but throughout that period of 20 years a number of States had no licence law; in fact, New York had no licence law until a few years ago. (App. XII. C., p. 115.)

16,788. These facts are put before us in the introduction, but the general conclusion is different from yours?—One of the most populous States of the Union, New York, had no licence law till 1907, I think it was, so that the statistics of marriages in New York, one of the most populous States, must be necessarily entirely inaccurate.

16,789. We quite appreciate that. I had a difficulty in reconciling your statement that the returns were utterly fallacious with the statement the responsible officials themselves make?—I say the conclusion drawn from the statistics is utterly fallacious.

16,790. I gather you do not question the reality of the increase of divorces itself the last 20 years?—No.

16,791. With regard to that increase, I think you said earlier to-day you thought that the increase of divorce was among the poorer classes?—The number of divorces, not the increase, is largely among the poor, and so high a percentage as 60 in Illinois. The poor and middle classes are by far the larger number.

16,792. You quoted in your proof from the returns which, if I may say so, we are most grateful to you for putting before us, that there is no great increase of divorce amongst the poor?—No, but there is a large number still.

16,793. You would not imply that it was among the poorer, the less educated classes, of America, that the increase of divorce had occurred?—I could not answer that with reference to every State. In the

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particular State referred to by one of my correspondents, he says there is no apparent increase among the poor, and in others they do not know.

16,794. I think your evidence shows that in the great majority of States the poor, if they desired it, could obtain divorce very easily without any obstacles of expense in their way?—Yes.

16,795. That being the situation, if there has been very little increase of divorce among the poor, that would imply in America there was no great demand?—It would, if I took your broad general premise, but there is no statement that there is no increase amongst the poor in every State in the Union.

16,796. I only state what you said the Report shows, there is no great increase of divorce amongst the poor?—Did I make it so broad as that?

16,797. It is on page 23 of your proof?—I was quoting certainly from one or two correspondents who had written me on that subject. Whether that is the fact throughout the whole of the United States I cannot say.

16,798. I appreciate that, and I call attention to your correspondent from the Boston Legal Aid Society, who says, on page 3: "I have been impressed by the fact that it is very seldom that a woman in this situation really needs a divorce." She does not want it. I only wanted to ask whether, on the whole, you thought that was true, the increase was not among the poor?—May I read from that letter? "It is my impression that during the last 10 years there has been no very marked increase in divorce among the very poor. Among the rural population in certain parts of the country, New England, for instance, there has probably been a very considerable increase."

16,799. On the whole, although qualifying it a little, you adhere to your statement that there is no very great special increase amongst the poor?—I would not say that through the whole of the United States. I should like to do so, but I had no intention of referring to the whole of the United States in that statement.

16,800. To return to the point of the increase as a whole. You do not feel there is anything serious in the situation in America as regards the marriage tie?—I do not.

16,801. How do you account for the rather remarkable agitation which has been going on for some time past?—Your remark I understand to be with reference to marriage.

16,802. Yes?—The agitation is against divorce. I agree with my correspondents and Mr. Howard; I do not think the increase in divorce brings about any increase in disrespect for the marriage tie or in sexual immorality.

16,803. My question was, if that be so, how do you account for the very widespread conviction that the divorce laws are dangerously lax, resulting in a diminishing regard for the sanctity of the marriage relations?—That is lax administration throughout the United States in certain parts by certain judges, certain persons, like members of the Protestant Episcopal Church and the Catholics, totally disapprove of divorce altogether. Others disapprove of divorce for some of the slight causes in the States, and they take the general increase in divorce and think it would be to the advantage of the community that there should not be so great an increase.

16,804. Would you admit that there was a widespread conviction that this lax administration had resulted in diminishing the regard for the sanctity of the marriage tie?—I do not agree with that preliminary statement of the Commission on Divorce.

16,805. It is not a statement of the Commission on Divorce, but the message of the President, Mr. Roosevelt, to the Senate and House of Representatives?—I would not make so broad a statement as Mr. Roosevelt on that point. He speaks of laxity in some States only.

16,806. You disagree with that statement?—I would not make so broad a statement. I think the whole thing has been misconceived to a large extent, and particularly you will find that with reference to the first Congress. The statement in their preliminary

address is that one of the great evils is brought about by migratory divorces. The complete answer is the statistics, which show that migratory divorces are not 10 per cent. of the whole. It is like a great many impressions one gets in this world as to social evils, and what not. Undoubtedly, a good deal of people's views are exaggerated because they do not go into the facts. I consider the Census Report is a great vindication of the people of the United States against the suggestion that there is an undue, enormous, and evil amount of divorce.

16,807. I take it you think that is the effect of the Report?—Yes.

16,808. You will agree that Mr. Walter George Smith, the Chairman of the Resolutions Committee of the United States National Congress on Uniform Divorce Laws would be a good judge?—I know Mr. Smith personally, and I think he is a sound man.

16,809. May I call attention to some words in the letters you were good enough to give which you did not quote when you quoted some others?—I am ready to read the whole, if you like.

16,810. On page 36, coming from him, I think this is important:—"Unless the tide of divorce is checked, social revolution is impending. In my apprehension the evils connected with an abolition of all divorce laws permitting re-marriage are far less than those attendant upon the present system." I quote Mr. Smith because he is the chairman of a committee which largely shaped the result of the Report?—Yes.

16,811. You agree he also was greatly exaggerating?—I think he has extreme views on this subject. That Commission was made up of men of varying views. Mr. Smith has extreme views. If you take some of my other correspondents you will find they say exactly the opposite.

16,812. I call attention to another you also quoted as a man having great authority, Mr. Lawrence, from Ohio; on page 34 he says:—"In my judgment the cause of the frequent divorces here is the feeling that the individual has the right to happiness if he can find it, and if a marriage is a failure for him he has a right to have it dissolved," and he describes the fact?—Will you kindly read on?

16,813. With pleasure. "A considerable number of divorces also occur amongst the more recent immigrants, generally because the woman learns that she does not have to stand ill-treatment here, and sometimes because the wife is unwilling to leave the old country to follow her husband here"; and then follow the words I want to ask you about: "I fear that the idea of marriage as a social institution has lost ground, and the obligation to society and the common interest is too often disregarded." I only call attention to this as witnessing the reality of what the President calls a very widespread conviction?—Certainly they are strong views.

16,814. Am I right in supposing that it was the efforts of the National League for the Protection of the Family that led to the Congress out of which the Model Law came?—I think it was; I am not sure about that.

16,815. May I call attention to the words of that Report:—"The Association, now known as The National League for the Protection of the Family, was instrumental in securing the legislation authorising the investigation which was made in 1887-1888," and then, "as the result of the activities of this Society, many petitions were sent to Congress," and so on. Would a society of that kind have induced your public authorities in the United States to take these steps if the statistics of increase were quite healthy, and the present state of divorce in the United States had been of the comparatively harmless character you attribute to it?—I think they should have had a more correct notion of the actual state of affairs, such as we have now got through the Census Report. Then I do not think people would have been led to talk so much about the divorce evil when it is nothing approaching what it was supposed to be, as the facts show.

16,816. May I call attention to what I think it is that Mr. Smith again says. Mr. Walter George Smith, the Chairman of the Committee of the Conference by

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which the resolutions were framed, says on page 35: "The statistics for the last 40 years, prepared under the direction of the United States Census Bureau, show a constantly accelerating increase in the number of divorces as compared with marriages." He then makes the statement you object to about being 1 in 12?—Yes.

16,817. The point is he had the results of the census before him and changed his opinion?—He apparently had not gone into the statistics.

16,818. Do you suppose the Chairman of the Resolution Committee had not gone into the statistics?—I do not understand your Grace to deny the statistics; there they are.

16,819. If your version is true, how is it there is this very strong and remarkable and widespread conviction among the citizens of America?—My answer to that is this, that the agitation for that Divorce Congress was based upon the old Census Report, where the proportion is not shown as it is in the present census.

16,820. Would you say, for instance, from your knowledge of public men—perhaps you would not feel able to say that such an authority as Mr. Seth Low would endorse your view that the publication of these had altered the situation?—I think if his attention or anybody's was called to that fact they would be bound to admit that when the Census Report says there are only reliable returns from eight States out of 46 as to marriages, taking that as the premise, you cannot establish anything like an accurate estimate of what the proportion of divorces to marriage is, and say it is 1 to 12 when there are no reliable statistics as to marriage.

16,821. In your opinion those that have been taking up this matter so strongly, public men in the United States at the present moment, would feel that the publication of the returns had altered the situation?—I think they would have been more careful in their statements, and would not have made the statement that there was one divorce in 12 when the statistics showed there were not. May I read on that point the report you refer to? "The last report seems to make it fairly clear that legal restrictions, though reducing other evils, have less effect in lessening the number of divorces than many hoped. In some instances such restrictions seem to reduce the divorce rate for three or four years, and then divorces apparently return to nearly or quite their old rate of increase. Nearly the most important thing which the investigation makes clear is that the divorce movement is everywhere a profoundly social movement that is back of law, back of religious and of educational treatment, and lying in the great social trend of the times, and, as will be indicated later, of the centuries."

16,822. I have read that report. It would be fair to say the object—it is stated—is to show the danger is so great and the evil so widespread that remedies much more effectual than restrictive legislation are necessary?—That might be an argument, certainly, but this report is subsequently to the last Census Report, and admits practically they were wrong in their conclusions from the want of legal restrictions.

16,823. I am quite familiar with it. I was interested in what you said, that the increase of the causes of divorce in the laws of the United States indicates and is meant to indicate a higher ideal of matrimony?—Yes.

16,824. Would it follow that the more causes for divorce any country allows, the higher would the idea of matrimony be in that country?—I should think it ought to be an indication of a higher idea of married life.

16,825. Do you say it indicates that Japan, for instance, which has an enormous number of causes for divorce, has a very high ideal?—I would not say that was a general conclusion to be drawn with reference to every nation. I think you must take the nation itself and the people who compose it. There are nations who believe in divorce by mutual consent. One would not say that represented a high ideal particularly, but I can conceive in certain nations it may be so.

16,826. As I understand, you rather agree with what Mr. Storey, the President of the Bar Association of Boston, says on page 23 of your proof: "I am inclined to believe that divorce laws are wise, and that nothing is gained by preventing the separation of persons whose life together is unhappy." If that be true, why should two persons, who may not have committed any sin or done anything disgraceful, but find their married life is unhappy, not be permitted to separate?—I think he is an extremist. I gave that as the view of an extremist.

16,827. On your own principles, is there any advantage to the State in having a restriction which compels persons who are profoundly dissatisfied with one another, going on living together?—I have not said I agree that people who say they cannot agree must get a divorce. This is not my view. My view is that the number of causes set out here by the Model Law, and certainly by Judge Brown, constitute the chief causes for which divorce should be granted.

16,828. I think in your own evidence you went a good deal further, and said that a person who came home drunk, or a person who showed ungovernable temper, was violating the marriage tie as readily as a person who committed adultery?—He might be.

16,829. Would you go so far as to say that the State, in order to maintain a high ideal of marriage, should give divorce for ungovernable temper or coming home drunk?—I would certainly for habitual drunkenness, which is one of the causes in the Model Law. That is what I referred to. Your Grace did not understand me to say if a man came home drunk once his wife ought to be able to get a divorce, or if he came home and had an ungovernable temper for once she should. I was instancing those as causes which would militate against happiness and might by continued repetition so bring about unhappiness and a breach of the marital obligation of one party to the other that they should in law be entitled to a divorce.

16,830. Your evidence is so interesting I must get at the meaning of it. If that is so, it must be the people themselves who must test whether their relation is unhappy. Why should the State say in this case, "We do not think your unhappiness is a reason for your separation"?—I have put my reply more broadly. I have said habitual drunkenness should; if it comes to ungovernable temper I should put that under intolerable cruelty under the Model Law. If a husband or wife is guilty of those repeated offences I think the other party should have the right to go to the court for a divorce.

16,831. If the principle be that the object of the State is to make married life happy, and that is the ideal, why should the State come to any two individuals and say, "You have not committed adultery, you have been drunken or sentenced to imprisonment; you are merely incapable of living together, but you must do it"?—I am afraid you are starting with a premise to which I cannot agree.

16,832. What is the premise?—That it is the business of the State to see all persons are happily married, or that happiness is the foundation of everything. It is at the bottom of marital life, but my point is that either of those offences is a breach of the marital obligation of the parties to the marriage.

16,833. You do not agree that nothing is gained by preventing separation of those whose life together is unhappy?—I would not make such a broad statement as that.

16,834. We have been very much impressed by what you have said about the high level of sexual morality in America. From what I know I should have thought that was absolutely just, but is not the difficulty which so many of your fellow citizens in America feel, not so much the increase of sexual immorality as the unsettlement and restlessness of family life?—That may be due to many causes. I think that we are now getting on to a very large question. There are many causes which lead to restlessness in family life in the United States; for instance, greater ease in travel, a greater amount of wealth distributed among the people, allowing them to go abroad and mix with one another.

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16,835. Would you not admit the facility of obtaining divorce from a very large number of causes must operate to some extent in increasing the spirit of restlessness and instability among families in the United States?—I do not think so, as a whole, taking the United States. I think it would amongst the rich, for instance, those who could afford to go anywhere and do what they like pretty well. I think it might in that class.

16,836. May I again quote the words of President Roosevelt? "One of the most unpleasant and dangerous features of our American life is the diminishing birth-rate, the loosening of the marital tie among the old native American families"—not among the immigrants?—I am sure he is referring there to the richer classes, because those constitute the older families to a large extent.

16,837. You admit among the wealthier classes there is a very great unsettlement of married life?—I think there is, but I do not say it is due to divorce laws.

16,838. I called attention yesterday to a remarkable Conference, not composed of Episcopalians but the representatives of every Protestant religious community in the United States, in which they in the strongest possible language felt that stringent steps must be taken to preserve, not sexual morality, but the stability and the permanence of family life?—Yes.

16,839. Would you think that was unnecessary?—Indeed I should not. That is called attention to in this report of the National League for the Protection of the Family, which says it is because the Church has not done its duty to the home that is a good deal the cause for this, not the divorce laws.

16,840. But the object of the League is as much as possible to restrict divorce legislation?—That is not the object; that is one of the things they wish to investigate. On the contrary, they seem to suggest that it is not the divorce laws, but the loosening of the religious tie, the laxity of the Church itself in not attending to the development of home life as well as it might do. That leads to this unsettlement in human life.

16,841. You consider that the divorce laws in America have no real bearing on the unsettlement of family life?—I do not say that; that is far too broad. I think they have some bearing, but not anything like the bearing which has been suggested.

I am sorry to have asked so many questions, but your evidence was so interesting.

16,842. (*Lady Frances Balfour*.) I should like to ask one or two questions with regard to the position of women in America in relation to this matter. Would you say that the American-born woman as a whole had a high ideal both of the married state and the home life?—I do, decidedly.

16,843. A very high ideal?—Yes.

16,844. In this correspondence with Mr. Smith that his Grace has referred to, I notice he says there that in 66 per cent. of the divorce cases in the United States the wife is the plaintiff?—Yes.

16,845. Is that because of the infidelity of the husband, or for desertion or cruelty?—I think in a large proportion of cases it is desertion.

16,846. And not a question of cruelty?—Cruelty to some extent, but the large proportion is for desertion.

16,847. I think there are three States in America which have the good fortune to possess the vote for women?—Yes.

16,848. Can you say if they have made any difference in the divorce laws of those States, Idaho, Wyoming, and Colorado? Has it restricted the reasons?—I could not answer you that question off-hand without looking into the causes. My impression is that it would not make any difference, because the laws of Colorado have been for some years quite broad and liberal in the matter of divorce.

16,849. It would be matter of fact whether since they had the franchise the laws have been in any sense altered?—Quite so.

16,850. I find amongst some of the reasons given, the growing spiritual liberation of the individual in

family life. That is rather a broad definition. The women do not feel they have generally a spiritual liberation of the marriage tie?—I cannot quite grasp what Mr. Howard's view is on that point. It is rather indefinite, it seems to me.

16,851. It is a peculiar definition, rather?—Yes.

16,852. Then we find that a leading woman lawyer gives it as her opinion that the two reasons are the growth of economic independence of women, that means that the women are not obliged to submit to what they may have to do in some cases where they are entirely dependent on their husbands?—That is so.

16,853. And also to the relaxation of religious restrictions?—Yes, she says that.

16,854. Does that mean that the women of America feel themselves free from the restrictions of the religious side of marriage?—I do not understand her to mean that. May I refer to it?

16,855. It is page 25 of your proof. "At large I should be inclined to ascribe the increase in divorces during the past 40 years to the growing economic independence of women and to the relaxation of religious restrictions"—I think she refers there rather, perhaps, to the decline—if you want to call it a decline—or indifference in viewing religion and religious matters generally at the present day from what used to be in the old Puritan days. That is my impression of her notion.

16,856. (*Judge Tindal Atkinson*.) I will take one of your States, New York State. How many district courts are there in that State?—Do you mean courts having High Court jurisdiction?

16,857. Yes?—Over 60.

16,858. It is in those courts that the divorce proceedings are taken?—Yes.

16,859. Is there a subordinate or inferior court to that in the district?—In the State?

16,860. Yes?—No.

16,861. Something corresponding to the county courts?—Yes.

16,862. How many courts?—They have a county court for each county, and there are over 60 counties.

16,863. In that State?—Yes.

16,864. I wanted to know how it was that a divorce could be obtained in the district court so cheaply in some instances?—It is not called the district court in New York; it is called the Supreme Court.

16,865. Some of the parties must reside a considerable distance from the court, and have to bring their witnesses?—Not very far.

16,866. What should you say?—I should not think any would have to go more than 50 miles. On an average I should think not more than 20.

16,867. They have to take their witnesses into the town?—Yes.

16,868. And keep them there till the case comes on for trial?—Not necessarily so. Under the practice in New York many divorce cases are tried before a referee. The testimony is taken by a referee at the town of the residence of the parties. That referee draws up a report as to the facts and the law, and that report is submitted to the Supreme Court judge who appointed him. That judge may affirm or disaffirm his report. If it is affirmed the judgment of divorce is entered upon the decree confirming the referee's report, so that witnesses need not go to the High Court. They can attend at the referee's office, the referee always being a lawyer in the town in which they live.

16,869. Is the referee a member of the Bar?—Always.

16,870. That accounts for the cost being so moderate, 3*l.* or 5*l.* I think you mentioned?—That would account for the lessening of the cost of witness' fees and travelling, but you have to pay the referee's fees. The small cost I referred to was in the City of New York.

16,871. 'Actually in the city?—Yes. The court fees are so small, and you can get a number of reputable lawyers, if the parties are very poor, to give their services for nothing.

16,872. Is there any instance you know of where the State pays the railway fares and expenses of the

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witnesses?—I have never heard of such a case. I do not think any statute doing so would be constitutional.

16,873. (*Mr. Brierley.*) I do not want to labour the matter I was asking Mr. Crane about yesterday, as to insanity being a ground of divorce, but you have told us two States, Florida and California, have repealed insanity as a ground of divorce, and you have given the ground why it was repealed, or what you thought to be the ground?—Yes.

16,874. Can you tell me what the date of that was?—I think the statute in Florida was passed about 1900. When the one was passed in California I do not know. (*App. XII. B., p. 115.*)

16,875. When were they repealed?—It was repealed in Florida within two or three years, I think.

16,876. It does appear that those two States were not satisfied with making lunacy a ground of divorce?—Yes.

16,877. I pointed out to Mr. Crane it also appears two other States, namely, Arkansas and North Dakota also repealed their law?—Yes. (*App. XII. B., p. 115.*)

16,878. North Dakota, after an experience of only two years?—Yes.

16,879. Have you any idea what led to that?—Probably they found that statute led to grave abuse.

16,880. It would be interesting to know whether it did lead to abuse or whether the law is likely to lead to

abuse?—I do not know what the cause was in those States. The only cause I know, certainly one very strong cause, was the particular instance of the very rich millionaire, who practically greatly aided in getting the statute passed, and got a divorce from his wife on the ground of insanity; she recovered, and there was a great outcry against any such statute, and it was repealed I think within about two years.

16,881. At any rate I think it would appear that the prevailing opinion in the United States may be said to be against making insanity a ground of divorce?—I should hardly say that, because the National Divorce Congress discussed it, and I think there was considerable opinion in favour of it, but only in the case of the wife, giving her the right of action in a case of insanity.

16,882. They gave her a right of action?—*A mensd.*

16,883. They declined to sanction insanity as a ground of divorce?—Yes.

16,884. One may take it the weight of opinion in the United States is against it?—It seems to indicate that, certainly.

16,885. The experience of certain States seems to have been also against it?—Yes.

(*Chairman.*) I am sure, on behalf of the Commission, I ought to thank you very much indeed, not only for the great trouble you must have taken in preparing this evidence, but also for the extremely able way you have presented it to us.

The Hon. Mrs. EVELYN HUBBARD called and examined.

16,886. (*Chairman.*) You are the Vice-President of the Mothers' Union?—Yes.

16,887. I have been furnished by your secretary, I suppose it must be, with some papers, and I believe that your Union has volunteered to present their evidence through you?—Through three witnesses, of which I am one.

16,888. It was proposed by the secretary that you should attend and give evidence?—There are two other witnesses for the Mothers' Union as well.

16,889. I quite understand that. The governing principles of the Mothers' Union are stated in a little flyleaf which I have:—“(1) To uphold the sanctity of marriage. (2) To awaken in mothers of all classes a sense of their great responsibility as mothers in the training of their boys and girls (the future fathers and mothers of the Empire). (3) To organise in every place a band of mothers who will unite in prayer, and seek by their own example to lead their families in purity and holiness of life.” Then it goes on to say that “the Mothers' Union is a Church of England Society, founded on the Bible, and on the Prayer Book as proved by the Bible. The Mothers' Union is under the patronage of the Archbishops and Bishops, and works on Church lines. Its constitution was drawn up in 1896, and contains these words: ‘This constitution cannot be altered without the consent of two-thirds of the whole number forming the Central Council.’ ‘The three objects shall not be altered.’”?

16,890. Then on the next page the governing principles are stated to be: “That all married women are welcomed as members, except (1) those who are violating the sanctity of marriage by breaking their marriage vow; (2) those who deny the divinity of our Lord Jesus Christ; (3) those mothers who neglect to bring their children to Holy Baptism; (4) those who are notorious evildoers.” I think that is sufficiently specifying the principles upon which the Society proceeds?—Quite.

16,891. I have also had handed to me a more full document called the Handbook and Central Report?—Yes.

16,892. If I may ask you a question or two upon that to expound it more fully, it gives a list of the Central Council, and the names of some members of the Royal Family as patrons, including Alexandra, the Queen-mother, and then it proceeds to the business part of it. The patrons include all the bishops?—The bishops in England and Wales.

16,893. Including the suffragan?—And the colonial archbishops and bishops.

16,894. And also the bishops in Ireland?—Yes.

16,895. And the bishops in the different or at any rate most of the different colonies?—Yes.

16,896. Those are set out on pages 7 and 8?—Yes.

16,897. Then it states the central objects in the terms of that flyleaf, and points out under the heading of organisation that the archbishops and bishops who consent to accept the office shall be patrons of the Society. The organisation of the Mothers' Union shall comprise:—(1) The Central Council; (2) Diocesan Councils and Committees of Centres; (3) Members and Associates. Then further on it describes members and associates. The Society consists of members and associates—(a) members being married women who are mothers, in all ranks of life; (b) associates who may be married or unmarried women, in all ranks of life. All official workers engaged in the parochial, diocesan, and central work of the Mothers' Union shall be members of the Church of England, or of the Church of Ireland. (This rule not to apply to Scotland or the colonies.) No such restrictions to be made as to ordinary members. This is all familiar to you, but I want it to be on the notes so that we can realise fully the object and the constitution of the Society. I have read through the whole of the report of 1909, but I only find one reference direct to the divorce question which is in a speech of Mrs. Sumner, which appears on pages 33, 34, and 35. I am sure you will correct me if I am wrong, but I do not find any reference to this subject except in that one speech?—No, I do not think there would be any.

16,898. This report dates from the time prior to the constitution of this Commission?—Yes, that report was brought out in June of last year.

16,899. The Commission was not appointed till much later in the year?—That is brought out every year in the month of June.

16,900. Now that I have asked you something about the object of the Mothers' Union, the first object of which is to uphold the sanctity of marriage, I want to know whether this is the view you desire to present. At page 34, this is part of the speech, Mrs. Sumner says: “But there is one subject about which I wish to say a few words—the first object of the Mothers' Union, the sanctity of marriage. At the present moment there is a very great anxiety about the rapid spread of divorce and separation. We have to

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" regard it from a patriotic point of view. Owing to the Act of 1857—we are all ashamed that there should be such a thing—the Divorce Court was started in England. It was then said that the day on which the court was started was the darkest day England had ever seen. It is coming true." And then she proceeds to point out why. Is that the general attitude you adopt?—The general attitude would be this, having the sanctity of marriage as our first object, we do object to divorce in itself, and we consider that re-marriage after divorce is not permissible, and we take the marriage vow to be binding, only to be broken by death.

16,901. I only wanted to get at the general view. Is it the view you present on behalf of the Society that the tie is indissoluble by any laws?—Yes, we should feel that. Of course we have not come with that before us. The protest which I am to hand in to you is not drawn up on those lines because we understood that it was not before the Commission.

16,902. I want the general attitude. I want to gather fully from you the position of the Union and the principles it supports. Having got the constitution of your Society I will follow your proof. You have for many years been connected with the work of the Mothers' Union?—Yes.

16,903. I have already shown from the pamphlet the first object which you state in your proof?—Yes.

16,904. You said that you view with alarm any movement in the direction of extension of grounds or facilities for divorce, and you wish to hand in a number of protests against such a course representing a great body of opinion to that effect. Now I think we ought to have those protests?—I have a couple of packets with me and the rest are in the building. May I hand you the protest?

16,905. Yes. You hand us a form, but we want to appreciate what the protest is against?—Yes, I have brought that.

16,906. It is sent round for signatures?—Yes.

16,907. It is a printed form?—Yes. That is signed by the President of the Mothers' Union.

16,908. There is a letter sent with it which reads as follows:—"Church House, Westminster, London, S.W. "Dear Madam,—The Mothers' Union has been permitted "to send three witnesses to the Royal Commission on "Divorce, who are likely to be called after Whitsuntide. "Two of them will testify to the opinions of a large "number of the working women of England and Wales, "as expressed at meetings held to consider the "question of the extension of facilities or grounds for "obtaining divorce. We are further anxious to send "in as many names as possible of wives and mothers "of the educated classes, who are also entitled to be "heard on this matter which so vitally affects the "womanhood of our country. Such names need not "be in any way restricted to members of the Mothers' "Union. A protest is enclosed with space for ten "signatures, and you are earnestly requested to obtain "as many signatures as you can from personal friends "or others. These will be laid before the Royal "Commission by our third witness in support of our "protest against any extension of the Divorce Laws. "The forms should be returned not later than May "20th, to the Hon. Mrs. Evelyn Hubbard, Church "House, Westminster, S.W., who will supply additional "forms as required. Yours truly, Alice Chichester, "Central President of the Mothers' Union."?—Yes.

16,909. That is to indicate that some witnesses are coming and asking that the protest should be signed?—Yes.

16,910. The protest is this: "I desire to add my earnest protest against the extension of facilities for divorce. I believe that to cheapen or extend the grounds of divorce would be against the moral and social interests of rich and poor alike, and would encourage the seeking of divorce for trivial reasons." Is there a number of signatures to that?—To that I have got 21,389, but I should like to say that they have been got within a very short space of time. It has all been done within two months. We do not think anything of the numbers really because it has been very quickly done.

16,911. Are they all signatures by members of the Church of England, or do they include anybody outside?—I cannot tell you for certain, but presumably I should think they are. We have not restricted it. It is only our workers who are restricted to Church people.

16,912. Can you tell us whether the protests are restricted or signed only by members of the Union?—No, there are people who are not members of the Union, because we sent it, as the letter says, to workers primarily, but they were asked whether any personal friends liked to sign, and many of the signatories are not members of the Union.

16,913. I want some information of what the protest is against, because the protest suggests that extending or cheapening the grounds of divorce would amongst other things encourage the seeking of divorce for trivial reasons. Where does the Society get the information that anybody has suggested trivial reasons should be grounds of divorce?—I think a great deal we have heard this morning we should consider trivial reasons. They are considered grounds for divorce certainly in America and in other countries.

16,914. I was not thinking of America. I want to know where the idea seems to have come from that anybody in England, in this room or elsewhere, has suggested that a divorce should be had for trivial reasons?—I do not think that it has been suggested, but we should view with alarm any movement in that direction.

16,915. But suppose there is no movement in that direction?—Then we should be very pleased.

16,916. I am asking you a few questions as to the value of this protest. I can understand anybody in the country signing a protest against divorce for trivial reasons; I daresay the whole world would sign it, and it may be that a signatory to that effect carried no weight?—I think the idea was not so much that trivial reasons would be given as grounds for divorce, but that if the grounds were extended very much, people, perhaps for trivial reasons in their married life, might search about and find one of the grounds which had been allowed under which they could seek a divorce.

16,917. If those grounds were serious I do not see where the trivial reason comes in?—We do not know what they might be, but we hear and read a great deal that is said before the Commission wishing to extend the grounds, and all we wish is to bring forward a body of opinion that would very much deprecate any extension of grounds, because it is difficult to know where it would stop. For instance, if divorce were granted simply for desertion, a couple to whom marriage had become irksome, through incompatibility of temper or some other trivial reason, could connive at desertion, and plead it as a reason for divorce.

16,918. Does that mean to say that the extension would be protested against if, for instance, such a state of things ensued between husband and wife that it was no longer safe for them to live together?—Not that they should continue to live together. We consider and urge that relief should be obtainable by separation and not by divorce.

16,919. Do you think that would tend to lead to immorality?—It depends what view we take of that word.

16,920. I mean by sexual intercourse?—We do not believe re-marriage after divorce is permissible.

16,921. I mean it might lead to sexual intercourse?—That is assuming the worst side of everybody.

16,922. Yes. I should like to ask whether, for instance, it would be thought a trivial reason if a husband or wife, as the case may be, went to America and never intended to come back?—No, certainly not.

16,923. That would be very serious?—Yes.

16,924. What is the position that this protest intends to deal with in a case of that kind, I mean to meet the case of the woman left in England?—I am afraid in that we should not wish an extension of divorce for desertion.

16,925. You leave them to suffer in this country?—We think that the national character is quite as much benefited and raised by the patient endurance of hardships as by loosening the responsibilities of marriage.

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16,926. In that class of case you would give no relief at all because separation orders would be worthless, they would not be wanted, and divorce you deny?—Yes, I suppose that would be so.

16,927. I am sure you will forgive my pressing you, I only want to gather what the protest means—"I desire to add my earnest protest against the extension of facilities for divorce." Assuming that the law remained as it is, that means that poor people should not have the opportunity of coming to London, or of trying their case in their own county. Is that in the purview of the protest about facilities?—You mean about not extending the grounds?

16,928. Yes?—If we take our stand in fact upon this, that we object to divorce in itself, we cannot be supposed to wish that it should be extended. If we think that it has been harmful to one section of the community we do not think that it is desirable to extend it. As a general principle, we should be in favour of every section of the community getting equal justice at the hands of the law, and that any case should be tried by an equally competent court, both for the poor as well as for the rich, and that the expense ought not to stand in the way of anyone.

16,929. That if there was a law at all, as there is at present, it ought to be within the reach of the poor as much as the rich?—We should wish the poor to be on an equality with the rich in any redress that is given.

16,930. One wants to get a clear explanation, if one can. It is one thing to say facilities, but the wording of this is: "I desire to add my earnest protest against the extension of facilities for divorce." That assumes that the divorce law exists, but that protest against it is put forward on the footing that the poor could not get it?—I say, further on, that we feel that relief should be given by means of separation, by that I mean judicial separation.

16,931. I was not dealing with what you were going to say, but I wanted to get at the meaning of this protest. A protest against extension of facilities would seem rather directed against anybody who cannot at present, by reason of poverty, get a decree, being still kept out because of poverty. Does it mean that?—We do not wish for an extension, and we take our ground partly on the fact that we deal with the respectable class of the working people, because they all in joining the Union have an ideal before them. We maintain that the respectable section of the community do not wish divorce brought to their doors. We have proof of that. The next witness brings more evidence on that point, and she will give statements that have been made by the working women themselves. There is a resolution, largely signed, which she is bringing in presently, and we maintain that they resent the idea of it being brought to their doors, and that it will not be for their advantage, that it will be for the advantage of the immoral and the vicious. As far as they are concerned, it would be putting an additional temptation in the way and making it more difficult to bring up their sons and daughters with a high ideal of marriage.

16,932. Will you meet my difficulty, whether this protest means that nobody, who cannot afford it now by coming to London, shall have the facility given them of trying their cases where they can afford it?—You mean cheaper courts?

16,933. Yes?—We think that would be very unfair because they would not get the same court. It would not be putting them on an equality.

16,934. I was assuming a court equally competent to deal with the cases as if it sat in London?—I think our standpoint is, that having the objection and believing that divorce is wrong, we cannot wish any extension of it, although we wish the poor to be able to have redress for those grievances on an equality with the rich. We should say make the law equal by going further.

16,935. I am afraid that you do not quite appreciate the point I am making. Assume the law to stand as it is. This says: "I desire to add my earnest protest against the extension of facilities of divorce." If the law stands as it is, we have had put before us the view that the poor cannot afford to get the relief the law

provides, whereas those who have money can obtain it. I want to know whether this protest is intended to be directed against those who cannot afford it having the relief they think they ought to have?—Excuse my saying so, but it is difficult to answer from our point of view, because our experience makes us believe that a great bulk of the poor do not think they ought to have it, and do not wish for it. We do not feel that we are doing them an injustice in thinking that they had better not have it.

16,936. Does not that lead you to a desire to repeal the Act of 1857?—Certainly, we should go for it if we had the opportunity, only we know that that is not before the Commission.

16,937. I think it is clearly before the Commission. I understand that you would like to see the Act repealed?—Emphatically, we have no doubt about that.

16,938. Upon what ground is it you go. Is it a religious ground?—Certainly, based upon Divine law.

16,939. Divine law as contained in the Scripture?—Yes, and as interpreted by the Church to which we belong.

16,940. Do you know that there are a great many interpretations of that?—We take our stand on the fact that our Church has very distinctly expressed her interpretation by the terms of the Marriage Service, which she puts before us, in which it is clearly said in taking our marriage vows in our own Church we are given no alternative at all, but that the marriage vow lasts till death breaks it.

16,941. Will you assist me with an explanation of why the bishops were divided, or nearly so, as to whether the Act of 1857 should pass. Some supported it and some objected to it?—I think that is outside my province.

16,942. You prefer to leave those questions to a representative of the Church. It is, however, necessary for me to indicate to you, in order that you may appreciate it, the attitude with which this protest is brought before us?—Yes.

16,943. Do you think that view includes not merely the repeal of the English Acts but the Colonial Statutes?—We were not touching the Colonial Statutes. We have not considered that question.

16,944. If your view is correct it would probably involve it?—It might, I should think, but I am not in a position to say that for my Society because we are only speaking of England.

16,945. I wanted to call your attention to the consequences. Then, to go back to your proof, you say that the Divorce Act of 1857 has tended to deteriorate public morality, and that therefore its extension is to be deprecated. Does that mean in the view of your Society that the state of things is worse in society than in 1857?—We think that the Divorce Act has led to a laxer view of marriage, and that it has vulgarised and lowered public opinion on the marriage question.

16,946. Do you think that it would tend to deteriorate the morality of people?—It is difficult for us to say that. We cannot speak from personal knowledge of what it was before. It is difficult to say what it was before the existence of divorce. When the Act was first passed it was considered a great social disgrace to go through the Divorce Court, and a thing people did not like to mention, but that feeling has passed away. We think that it has tended to demoralise literature, and has, indeed, created a class of fiction which is demoralising.

16,947. Would you be prepared to say that the tone of marriage among the better classes is worse than in 1857?—Yes, we think it has led to deterioration of morality—a lower morality.

16,948. Mr. Bishop, whose authority is said to be very good, has a passage I should like to put before you with regard to the state of things in 1857; he says, "Indeed, it is well known that in England, where divorces from the bond of matrimony have till lately been obtainable only on application to Parliament, in rare instances, and at an enormous expense, rendering them a luxury quite beyond the reach of the mass of the people, second marriages without divorce, and adulteries, and the birth of illegitimate children, are of everyday occurrence; while polygamy

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"is in these circumstances winked at, though a felony on the statute-book. Laws punishing adultery, except as an ecclesiastical offence, are there unknown; and they are so in countries generally where divorces are not allowed, or allowed but for a single cause." Then he proceeds: "The wrongs whence come divorces are evils no one denies. If the refusal of divorce would prevent them, all would pray for it. But the experience of every State and country with holding this redress is practically, however men theorize, that no form of matrimony delinquency is less prevalent there than elsewhere. And to the extent to which separations actually occur, the community is remitted back to the condition it would be in if marriage itself was abolished. Nor is there any subject other than marriage, upon which any man claims that the commission of a wrong can be prevented by the law's denying redress to the injured person." My object in putting that before you is because that is the view of a great writer as to the state of things before 1857. Do you think that it is worse now than then according to the description he gives?—I do not think that we are able to speak exactly upon that point. We are speaking more of the deterioration of these later days.

16,949. Would it be referring more particularly to poorer people or to the others?—We were meaning the result of the Divorce Act, and that has only affected the well-to-do at present.

16,950. The next point you mention is that, with regard to the popular cry of one law for the rich and another for the poor, it should be considered whether such existing law is a benefit or not. That is involved very much in what you have already said?—Yes.

16,951. Then you say that it is evident that marriages are entered on more recklessly than formerly, and that is attributable in many cases to the existence of divorce facilities. Do you think that is a sound conclusion?—We hear of many cases. May I quote just an instance of what I mean?

16,952. If you please?—There are two cases that have come to my personal knowledge, without looking for them, during the last week or two, both of girls. One of them was engaged to be married to a man of bad character, and her mother was unable to prevent it, and asked a clergyman friend to talk to her about it, and at the end of the talk all she said was: "I do not mind what anyone says, I mean to try it; I look on it as a trial, because what is the Divorce Court for? If he is as bad as you say I can easily get rid of him." But for the existence of the Divorce Court that view could not have been taken. The other was a similar instance.

16,953. Have you found as a matter of experience that people recklessly enter into marriage amongst the lower orders. Does your experience enable you to say they do without due consideration, apart from the question of divorce?—I think so, but we think it would be worse still if they thought they could get out of it more easily. There is not sufficient care taken at present.

16,954. Then you say that obviously the more difficult it is to get out of a contract, the more careful will people be as to entering into it. That is covered by that view?—Yes.

16,955. Then you think that the present agitation is largely the outcome of hard cases. Would you be in favour of doing nothing for those hard cases?—Yes.

16,956. I should like to inform you I do not know how many letters I have received detailing hard cases. I should like to know whether the view you present is that nothing should be done to relieve them?—I think that we should certainly take the view—I am not at all minimising the hard cases, we recognise them fully—that they are hardships and tragedies to be borne, but it is a question of degree, and our view is that it is more likely to strengthen the national character and be for the advantage of the community for them to bear the hardships bravely than to legislate down to them.

16,957. Your view is to separate them without undoing the tie?—Yes.

16,958. Have you looked through the books which I believe another witness will produce, to show the consequences of such a separation. I went through them last night, but another witness will deal with them directly. Speaking generally, I think I can summarise it by saying that witness after witness point out the disastrous result of separating people, leaving them tied?—They also point out in a very great many instances a large percentage of reconciliations.

16,959. I agree with that, but I am speaking of those who act on the view that they are separated. Perhaps I may reserve that point. I do not know whether you have studied that?—I have seen those books, but I think that comes into the other evidence. That is our view. We consider that separation leaves the door open for reconciliation, which so very often takes place.

16,960. Have you seen, if they are not reconciled, what are the consequences as disclosed in those books?—I think I must leave that for the other witness.

16,961. I am afraid of omitting to put anything I ought to put?—My impression was that many said that they were not leading immoral lives in consequence.

16,962. I think that exhausts the next paragraph of your proof. Then you say that this remedy of separation in cases of unfaithfulness ought to be made equally accessible; and its application ought not to depend on whether the parties have more or less means at their disposal. Would you explain what is meant to be conveyed by that?—Separation ought not to be made too expensive for the poor to be able to avail themselves of it.

16,963. Does that separation involve the equality of sexes for the same causes?—Yes.

16,964. Then you refer to Switzerland and the United States, which countries show a gradual demoralisation consequent upon an increase of facilities. That is a general observation?—Yes.

16,965. Have you gone through the statistics as Mr. Barratt has?—No; but I was much interested to hear him. May I say here, with regard to what he said this morning, we can hardly feel that the view that he takes as to the sanctity of marriage is the same as we understand by it, and the purity of home life, which he quoted as not being interfered with by divorce. One does not understand that view of the sanctity of marriage, if the vow is broken and husbands and wives are married to other people. We do not see where the purity of home life comes in under such circumstances.

16,966. I forget whether I asked you your view as to how the cases of persons disappearing to another country should be dealt with?—I think they come in among the tragedies that we have to face.

16,967. Even although the other person has established a new home in another country, and under the laws of another country?—We do not consider that has broken the individual vow of the other party.

16,968. Then you say that the movement is to be deprecated as pandering to the present-day idea that suffering and hardship are to be avoided at any cost. That is a general observation?—Yes; and the view we heard so much of this morning seemed to be that happiness was the one thing to be aimed at in married life. It seemed that happiness was to take the place of duty and responsibility.

16,969. The next point in your proof we have arranged should be left to those who deal with it more from the ecclesiastical point of view. Then you say at the end that the solution, therefore, is not relaxation, but a stricter sense of obligation. That sums up your view?—Yes.

16,970. I think that is all your proof contains, and I am leaving the books to the lady who knows more about them than you, yourself?—Yes, that is quite right.

16,971. (Mr. Brierley.) I understand your evidence to be based upon your view that divorce under any circumstances is not permissible?—Yes, that is our view.

16,972. Your real desire would be to repeal the Act of 1857 altogether?—Yes; I have said this morning that we did not come in upon that, believing that it

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was not before the Commission, but when you assured me that it was I am able to say that would be our view.

16,973. Assuming that the Act of 1857 remained, do you think it is just that all classes should not be able to exercise the legal rights that the Statute gives?—I can only say what I said this morning, that if we consider it a wrong condition we cannot wish it extended, if we think it only brings harm.

16,974. So long as the State gives a legal right to its subjects, does it not follow, as long as that Statute exists, that it is right to give an opportunity to all classes to exercise that legal right?—I think I can only answer, we are standing as Church people in our view on that line.

16,975. You mean standing as a certain school of Church people?—Yes, but not restricted to any school.

16,976. Still, whatever the injustice may be, you are prepared to face that rather than extend in any way the facilities for obtaining redress?—As a society we cannot recognise the right to a divorce.

16,977. (*Judge Tindal Atkinson.*) I understand 21,000 signed the protest?—Yes.

16,978. May I assume that not any of those 21,000 have felt any hardship under the existing law?—How do you mean?

16,979. I mean those who have signed the protest are not likely to have been sufferers by the existing law?—I should think probably they were not.

16,980. Therefore, those who signed that protest would have no reason to desire any alteration of the law as far as they were personally concerned?—No, I do not think that those who signed this protest have suffered under it. You will be having many more resolutions brought in by another witness from poor women (I have nothing to do with them) and they no doubt might be sufferers at any time. I do not know if the individuals who have signed it are sufferers, it is impossible to say, but they are of the class that would be sufferers.

16,981. You cannot tell whether any in fact have suffered?—No, I cannot.

16,982. You would not give, I understand from your answers, the poorer classes of the community any relief in getting divorce, however unjust their cases might be?—We should urge that they should be able to get relief through separation and not through divorce.

16,983. By separation I suppose you mean judicial separation?—Yes.

16,984. Except that it prevents re-marriage, is not that practically a dissolution of the marriage. When people are judicially separated are they not to all intents and purposes the same as if they were not married. Neither one can call upon the other to perform any obligation of marriage?—Is it not possible by mutual consent.

16,985. While judicial separation lasts by the order of the court, is not that practically a breaking of the marriage tie altogether?—No, I do not think it is the same. It is suspended while the wrong continues. It can be cancelled at any time by mutual consent.

16,986. Is not a judicial separation as much a violation of the marriage service as a divorce?—No, we should consider that it was not.

16,987. Those whom God hath joined together let no man put asunder. If you grant a judicial separation you do by the force of law put them asunder?—You put them asunder temporarily while the wrong lasts. You must afford a legal protection to people.

16,988. You put them asunder for the whole of their lives?—Not necessarily.

16,989. They must come together only by mutual consent. If one party chooses to say, "I will not come together," they are asunder for the rest of their lives?—The marriage is not annulled.

16,990. But they are put asunder. They cannot call upon each other to perform any legal obligation?—No, we do not consider that annulling the marriage.

16,991. You have said the great advantage of separation orders is that very often you get reconciliation. I think I understood you to say that?—Yes.

16,992. We have had evidence from a good many of the stipendiary magistrates, who say that very often those reconciliations are brought about, because the

husband who is separated by the order of the magistrates cannot afford to keep up separate establishments, and the wife who is separated cannot get any living, and they are obliged to come together again, simply from the force of necessity. Supposing that the wife has got a separation order on the ground of brutal cruelty of the husband, do you think that is a reconciliation which is of any use whatever to the wife? Must not she live in a state of constant terror?—I suppose she would have to get legal protection.

16,993. The reconciliations which have been spoken of in so many cases are not reconciliations in fact at all; the necessities of the parties make them come together. Would it not be better in those circumstances to be altogether separated?—We take it that there are a great many reconciliations. There are a certain number of hard cases, but we think that hardships would be created for another large number if the law were extended. It is legislating for the few really.

16,994. The few should suffer hardships rather than affect the marriage laws in general?—Yes.

16,995. There ought to be no relief?—Yes.

16,996. (*Sir Lewis Dibdin.*) I have very little to ask you. It has been rather put upon you that you were willing to tolerate injustice to individuals in order that your view of the marriage tie might be maintained. As I understood your evidence, your point is that there is no injustice to individuals at all. Is it not your point that the self-sacrifice, which is necessary on account of sufferings between the man and his wife, is part of the original contract?—Yes.

16,997. A part of the "for better for worse" which they are bound to face?—Yes, and which can only be broken by death.

16,998. You would say that it is begging the question to call that injustice?—Because if the words meant anything they accepted the responsibilities for worse as well as for better.

16,999. You have heard what has been put to you, that there are many sad cases of so-called reconciliation, where the woman has been forced to go back to the husband. That is one of the tragedies that you refer to?—Decidedly.

17,000. But, on the other hand, in your investigations have not you found a large number of cases of reconciliation which are reconciliations in the truest sense?—Absolutely, and they have lived happily afterwards.

17,001. Would it not be misreading facts to assume that all reconciliations, or even the typical reconciliation after a separation order was one where the reconciliation was merely compulsory?—Decidedly, in our view.

17,002. You were asked about 20,000 ladies who signed the memorial. You do not allege you are personally acquainted with them all?—Indeed not. I have said that the protests were primarily sent through the workers in our organisation, who live all over the country, and they were to circulate them through the ladies that belong to our Union or their personal friends. They are not restricted to members of the Union.

17,003. They are people who from their circumstances would be likely to be able to form a sound judgment on this point?—Yes. I cannot answer for them all. I should not like to say that they are all people of sound judgment, but a great many of them are. They are many of them workers, and intimately acquainted with work among the poor, and they at any rate wish to make their voices heard, because they consider that they, as a body of Church people, have a right to make their opinion known.

17,004. It does not follow because they have no personal or selfish motive in favour of divorce that their opinion may not be of weight?—I do not see why it should. Everybody who has given evidence has not personal experience or knowledge.

17,005. (*Lady Frances Balfour.*) You said that there were branches of this Mothers' Union in Scotland and Ireland?—Yes, and the Colonies. It is largely spread, but we are only dealing with England and Wales.

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17,006. I gather that the officers in England can only belong to what I may call the straightest sect of the Church of England?—They belong to the Church of England.

17,007. What happens in the Church of Scotland?—It is worked by Presbyterian workers.

17,008. Then I am certain that they do not hold exactly the same views as the officers of the Church of England?—The Scottish Mothers' Union is affiliated to the Central Mothers' Union.

17,009. There is a certain amount of local self-government in Scotland?—Yes.

17,010. Admitting that the Divorce Act exists and is not immediately to be repealed, you said you did not feel that there was any injustice in the poor not having access to a court where they could get the redress they need?—I think I said, holding the views we do of marriage, it is impossible to say we wish to see divorce extended in any direction.

17,011. You do not think the Divorce Act is an Act of justice towards married parties in the relief that it contains?—We can but take our standpoint, that we do not believe it to be right.

17,012. Do not you feel the fact that there is this court and this law which is accessible to those who can afford to pay for it, conduces to one of the worst senses you can have, a sense of injustice in the minds of those who know they are cut out from it because they are poor?—I said this morning, did I not, that as a broad principle we feel that every member of the community ought to be able to obtain justice, but if we are pressed as to this particular point we do not think that it is for anyone's benefit to have it.

17,013. You would be content if the State was prepared to pay the expenses of the poor to get to the High Court?—We would rather nobody got to the High Court for divorce.

17,014. In hard cases which you say are so good for the nation to bear, and which largely increase the stamina of the nation, have you thought not only of the couple but of the position of the children under drunken parents and diseased parents, and all the things which have to do with the well-being of children, and perhaps justice as applied to children? Have you thought of the children?—Yes, but they would be protected equally by a separation.

17,015. Would they be living under the moral conditions you think it necessary for the home to have, and we all think so. Is it an object lesson, the separation of the tie which is for better, for worse, and which cannot be loosened on this earth except by death? Is that separation the ideal of a home?—Certainly not; but then are we to relinquish an ideal every time anyone falls short of it?

17,016. Is it an ideal either for the children or for the State?—I do not think divorce is an ideal for the children either.

17,017. Do you think the conditions of separation are ideal, the parties living probably in immorality, certainly in many cases?—That is assuming the worst of people, that they must live in immorality.

17,018. I am rather upon the facts. The facts of the case seem to be very strong. In many cases it means that?—No doubt it does in many cases.

17,019. (*The Archbishop of York.*) Lady Frances Balfour asked you whether your Union represented the straightest sect of the Church of England. I do not know what she meant. Do the members of your Union belong to any section of the Church of England?—No, that is why I said they belong to the Church of England.

17,020. I suppose a considerable number of those whom you represent have been familiar with the effects of divorce upon society in general among the upper and middle classes?—Certainly.

17,021. It is on the basis of that experience that they authorise you to represent them?—Yes.

17,022. With regard to separation I should like to ask you, representing this large body of opinion, whether you would feel it to be a great injustice if judicial separation were ever forbidden as a remedy in matrimonial difficulties?—Certainly.

17,023. Would you say there were a large number of people who, even if they felt that they must be

protected from their husbands, would never consent to a divorce?—Yes, decidedly; and who think that the remedy should be by separation. We have heard this morning of a State in which there were conscientious objections to divorce. That was evidence that came from America, and I represent just those views—conscientious objections to divorce.

17,024. You mean who had conscientious objections to divorce, and no matter what happened in their family life they would never resort to it. In your judgment there is a very large number of women of that kind indeed in England?—As far as we can say; we know that it is held by all those that we are at all representing. We cannot go further than that. I am only able to speak now as representing our Society. In England and Wales it means 280,000 persons. I know it is not a large number, but I am not authorised to speak for more than we stand for, though I know that many others think with us.

17,025. In regard to what you said about the right of the poor to justice, those whom you represent would not put the position in the form of saying: "We value the expense of divorce because it keeps people away"?—Certainly not.

17,026. You would rather say we would prefer no divorce law, but if there is to be a divorce law we should like the marriage contracts of the poor to be treated as carefully as the marriage contracts of the rich?—We think they ought to be treated with as much care as those of the rich, certainly.

17,027. With regard to the children, do you think your view would be that whilst some children in some homes may be made happier by the divorce of one of their parents, the danger is that a larger number of children in a larger number of homes might have their family life greatly disturbed and unsettled?—Certainly. I do not think we could deny in individual cases of children it would give them a happier life if the parents had a divorce and re-married, but then we take the line that happiness is not the ultimate end of everything.

17,028. Would you say from your experience that, on the whole, in cases of separation, the poor especially are wonderfully able to find work and homes for separated women, and that they are neighbourly and kind to them?—Our experience would be that they are wonderfully able and anxious to bear and to forgive, that the endurance shown by the working people and by the working women is perfectly marvellous, and our experience of them, which is amongst the more respectable section of them, is that they very much resent the suggestion of divorce. We have known a good many instances where it has been suggested that it might be well to get a divorce, and they say that they will not hear of it. They "took him for better for worse," and they are going to stick to him, and their example of endurance is wonderful.

17,029. (*Mr. Burt.*) There is only one point I would like to be clear upon. I understand that your attitude is one of absolute hostility to divorce. You regard the marriage tie as indissoluble?—Yes.

17,030. Assuming that we have the divorce laws and the divorce court, and knowing—an instance has been presented to us—that the divorce courts now are practically inaccessible to the poor, do I understand that you are opposed to affording the poor any facilities further in the way of applying for divorce?—I feel as though I cannot go further than I have said several times, that in our view, if we consider a thing is wrong in itself, we cannot be expected to say that we wish to see it extended. We should stand for equal justice, and we should like to see it in a different direction for all of us. I was told this morning it was a question I might bring before the Commission, that we stood in favour of the repeal of the Act.

17,031. I think you have made that quite clear; but I understood from your answer to his Grace just a moment ago that you would not really deny justice to the poor, but that you would afford facilities to them?—Certainly, we do not think want of money ought to be any bar to obtaining justice for any section of the community, as a broad principle.

17,032. (*Sir George White.*) Following that question, may I ask what is the value of holding a principle of

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[Continued.]

that sort if you are not prepared to do anything whatever to carry it into effect. You said in answer to his Grace just now that you were anxious that the marriages of the poor should have as much care as those of the rich, and you have said again and again that you are willing to give the same facilities. But there is only one way in which you can give any facilities under the existing state of the law, and that you are not prepared to do?—If a thing is wrong we cannot wish to extend it, but we wish to see redress in the direction of separation given to all alike.

17,033. Your evidence may be summed up in a desire to repeal the Divorce Act?—It comes to that.

17,034. May I ask you how far you consider you are representing the opinion of the Church of England generally?—I am not professing to represent the opinion of the Church of England, I am only here representing the Society of which I am a member.

17,035. I understood you did not feel you were representing one section of the Church of England only?—No.

17,036. The Chairman asked several questions as to the basis of this Mother's Union, but I did not ascertain whether it was a body of educated ladies who presented these memorials, or whether the Union itself was mainly composed of poor women guided and helped by educated ladies?—I do not think I quite understand the question.

17,037. I want to know whether the Union is composed chiefly of poor women, merely the officers and helpers being educated ladies?—I should say about one quarter are educated ladies out of the whole.

17,038. Would those 21,380 signatures represent very largely the poorer members of the Union?—This does not touch them. These are signatures of the upper and middle classes. The poor women's expression of opinion comes from the next witness.

17,039. They are expressing what they think would be good for the poorer people?—The extension of grounds for divorce touches all sections of the community equally. It was on that, very much, that they wished to express an opinion.

17,040. You say you are guided in your action by the belief that it is the divine law in Scripture that these marriages should be indissoluble, and also by the traditions of the Church?—Yes.

17,041. You recognise, of course, that a very large amount of public opinion in the nation would not be influenced by those traditions?—Yes, perfectly.

17,042. And that if your idea of repealing the divorce law was carried out that it would act very prejudicially towards our Colonies: To have the condition of the law in two opposite positions in the Mother Country and the Colonies would lead to a great deal of complication?—I am not in a position to speak about that, because it was the question of England that we were touching.

17,043. Of course, you cannot disregard the consequences in a case of this kind?—No.

17,044. You would regard it as an unfortunate thing in itself to have a different law in the Colonies to that which exists in the Mother Country?—It would remain to be seen if the time came what line the Colonies would take.

17,045. Do not you think that a great many of those who are suffering from ill-treatment of one of the spouses, either husband or wife, may regard it as an insufferable hardship that they are tied for life to a man of the character we often hear of before this Commission?—Yes.

17,046. Is not that likely to lead to immorality?—Yes, no doubt it often would.

17,047. You are prepared to face those consequences as well as all others?—Because it would be relieving a certain number of hardships by creating a greater hardship on many more. That is our view.

17,048. You lay a good deal of stress upon the way in which these things strengthen the national character, and you say how desirable it is if called upon to suffer these hardships without attempting to get a remedy. Are you putting yourself in the position of those who have suffered? It is easy to preach doctrines of that sort by all of us, but when we preach that doctrine

from a high altitude, are we putting ourselves into these positions of hardship? We do not court them naturally?—No, we hope we should be prepared to carry out what we think would be the right thing in other people.

17,049. I am sure you would from your own conscientious point of view, but you have to consider those who do not take that view, either from the teaching of Scripture or from the tradition of the Church, which would be the majority of the nation, I suppose?—Must we legislate for people at their worst always? May not we take people and look at it from the point of view that it is possible to lead a moral life?

17,050. One of the parties, if not both, has broken the marriage tie in the worst possible form, and has failed to keep his vows in any shape or form, and yet you compel the other party to follow the tie as far as they can, at any rate, and to refuse the man release. That you take as part of the natural consequences of the marriage tie which you think they ought to bear cheerfully?—Yes; we should say, because one has failed in carrying out his vow, or her vow, it does not release the other one from the obligation that he or she undertook when they pronounced the vow.

17,051. Do you think, on the whole, that such a condition of things is in the interests of morality?—Holding the view that we do as to the sanctity of marriage, we do not consider that re-marriage after divorce is a moral condition, and, therefore, that it is in the interest of morality.

17,052. (Chairman.) What is the total number of members of your Union?—In England and Wales, 278,500.

17,053. And the other departments of which you have branches?—Taking the total with Scotland and Ireland and any branches in the Colonies, 337,000.

17,054. Are they all women?—Yes, women of all classes, all, of course, married women and mothers.

17,055. Do not you have any members other than those who are mothers?—A few associates—unmarried ladies—to help in the organisation. The members must be all mothers.

17,056. I may take it from that statement that they are a very respectable body?—Yes, we are dealing with a respectable section.

17,057. They are not those who, as Sir George White asked, have to suffer these hardships?—Hard cases occur among them, but they resent the idea of facilities being brought to their doors and placed before their sons and daughters.

17,058. With regard to the signatures you mention, are they English or Irish?—England and Wales only.

17,059. Are there any Colonial signatures?—No.

17,060. I want to ask you one question with regard to your general position. Have you considered, if your view were adopted, that it might lead us back to the time of special Acts of Parliament which went on for something like 200 years?—I know they did.

17,061. Have you thought whether the adopting of your principles would lead us back to that?—No, I have not been empowered to speak on that.

17,062. If your views were adopted, it would be open to anybody to apply for an Act of Parliament, as in the olden days?—That would hardly affect the community at large.

17,063. If that were still left open to the rich, with the enormous cost it incurred, might not you produce a greater state of hardship than exists at the present day?—I do not think I am in a position to speak on that point.

17,064. I forget who used the words, but you spoke about the phrase "for better, for worse," which is well known to us. Do you consider that those words apply, no matter what the conduct of the other side is? Are they understood to imply that each side shall do his or her duty?—Our view is that each one who says those words undertakes them, whatever the "worse" may be.

17,065. Even though that worse is by the action of another party who absolutely repudiates all obligations?—Yes.

(Chairman.) I think I ought to thank you very much on behalf of the Commission for your evidence.

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[Continued.]

Mrs. EMELINI STEINTHAL called and examined.

17,066. (*Chairman.*) Are you Ripon diocesan hon. secretary for the Mothers' Union and district head of Ilkley Guild of Help?—Yes.

17,067. The Union is that for which Mrs. Hubbard has given us the constitution and objects?—Yes.

17,068. It is a branch of that Union?—It is one diocese. The whole of the branch is in one diocese.

17,069. I need not trouble you to go through the objects which I asked her about, nor about the protest. Have you known the poor intimately for 30 years, and largely in Bradford?—Yes.

17,070. The Guild of Help also brings you in contact with the very poor in the district of Rochdale and Bradford?—Yes.

17,071. Have you handed to the secretary resolutions passed by various members of the Mothers' Union connected with this subject?—Yes, I have brought in the votes collected at different meetings of members of the respectable working classes.

17,072. Is this the resolution that has been generally accepted?—Yes.

17,073. That the "members and associates present earnestly protest against any extension of the facilities or grounds for obtaining divorce, believing that any such extension would lower the ideal of marriage in the minds of the people and injure the home life of the country"?—That is the resolution that has been passed.

17,074. Will you explain what is meant by the protest against any of the facilities of divorce?—The formation of new courts in the country so as to bring it nearer to the people, and the cheapening of divorce, and also more facilities in opening different rights to divorce, such as desertion and drunkenness.

17,075. Those are the grounds?—Yes.

17,076. The grounds I am coming to. Does that mean, assuming the law remains the same as it is, that the poorer classes should be left in the position in which they are with regard to access to the divorce court?—Yes, that is the wish of the thinking respectable mothers.

17,077. Does that mean that they are to be still excluded where their means will not permit them to come to the High Court?—Yes, that is distinctly their wish. They are feeling most strongly on this question.

17,078. The grounds is another matter. They do not wish any grounds of extension?—They do not wish any grounds of extension whatever on account of the difficulties of bringing up their boys and girls.

17,079. With regard to the facilities I am not sure that I appreciate that attitude. Why do they take the view that the well-to-do should be able to get access to the London courts, but that those who cannot afford it should not?—I have some opinions here of mothers expressed at meetings. There is a great feeling among mothers that there ought not to be divorce at all. That is coming from the mothers themselves.

17,080. Is that the point that there should be none at all?—The great majority wish that. They get up at the meetings and speak to that effect. A great many who do not know so much about it are afraid of it coming into their midst, and getting nearer to their homes. The poor women have a great feeling that it is going to bring legal help to the vicious in their streets. That is the feeling in the North. One woman said: "Why should Mrs. So-and-so, who has been a bad woman all her life, be made respectable by law when I have tried all my life to be a good woman."

17,081. She would prefer her to remain in a vicious state rather than that the law should help her out of it?—I do not think that she approves of vice being legalised.

17,082. If the effect would be to improve the position of a person would they resist it?—I think these women would doubt that. They would very much doubt it.

17,083. I ask that because I am coming to your book, which is full of interest?—May I say the number of votes I have brought in?

17,084. Yes, if you please?—85,491 from the working women. They are women who do not come into courts and are not known by lawyers.

17,085. Mothers?—Yes, they are poor, very poor, and they come with shawls and clogs, and so on. It is not that they are well-to-do people. They are cottage people, but they have got the great instinct of religion in them, and are trying in the present day to do what they can to make the country better, and they feel that this would be a great drawback to them.

17,086. I will follow up the idea which has been suggested by Sir George White. They are a class of people who have not themselves felt the burden of the difficulties?—A great many. I have had many talks with mothers who have great difficulties with drunken husbands and men who have deserted them, and they say that they feel very strongly that they married for better or worse, and that they will stick to their husbands.

17,087. That is even although the husband has gone to America, and not been heard of again?—Yes, constantly. One woman came the other day and said she did not know what she had done to be so insulted, Mrs. So-and-so had proposed that she should be divorced from her husband. She said: "He may be a brute, but he is my husband." He was a drunkard in London.

17,088. You have here two books, but they are not referred to in your proof?—Yes, they are at the end.

17,089. They bear so strongly upon the class of people you have just been speaking of that I think I would like to get to them at once. You have handed in two books to the secretary which are entitled "Memoranda of evidence collected by the Mothers' Union from officials, &c."?—Yes.

17,090. Will you explain who those officials are, and how they have been collected?—They have been collected through our organisation, the Mothers' Union.

17,091. Have you a typical letter to the collectors as to what questions they were to ask?—I have the questions for you which I believe are there.

17,092. I am going through the book. I believe you have taken the trouble yourself to copy into the book the nature of the questions, and the answers received, and where they come from in every case?—Yes.

17,093. If you do not mind—it is a little trouble—I should like to go through it with you. I take it the questions are put in the correct form?—Yes.

17,094. Question 1: Is there, so far as your experience goes, a widespread or any demand for greater facilities for divorce amongst the poor? I think this is extremely important, and I should like to go through it. The answers to the question are as follows:—*Durham* (Durham) (Lady Superintendent, St. Catherine's Home):—No, they form illicit connections without divorce. *Devon* (Plymouth) (The Lady in Charge, Three Fold Cord Refuge):—No. *Essex* (Colchester) (Miss Shinn, 38, Gloucester Road):—No. *Brentwood* (G. M. Sanders, Shelter for Rescue Work):—As far as my experience goes, there is no demand for greater facilities for divorce among the poor. *Leytonstone* (Elizabeth Billing):—No experience in this matter. *Hampshire* (Alton) (Mrs. Knox, Holt Hatch):—No; from a fairly intimate personal knowledge of the poor I should say they are strongly opposed to divorce. *Aldershot* (Anne Avery, The Refuge):—Emphatically no. *Hertford* (Bishop's Stortford):—(The Lady in Charge, The Shelter):—No. *Hitchin* (Miss A. Gilder, 39, Walsworth Road):—No. *Hereford* (Hereford):—(Madeline Atkinson, Hon. Sec., Rescue Society):—It should be the same as for the rich, to avoid comparisons. Is the answer exactly like that?—Yes.

17,095. (Hereford) (Miss Anderson, St. Martin's Homes):—No. *Kent* (Maidstone) (Miss Smith, 4, Bedford Place):—No, only in one case to my knowledge. *Lancashire* (Manchester) (Mrs. Coller, 21, Westwood Street, Moss Side):—No; but I think the lack arises from ignorance rather than from moral sentiment. (Manchester) (T. Lomax, Agent of C.E.S., 133, Deansgate):—So far as my experience goes, there is no demand for greater facilities

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" (Manchester) (Rev. W. H. Newitt, Secretary and Speaker for White Cross) :—No. (Burnley) (Sister-in-Charge, Bank Parade) :—No. (Stretford) (W. Cyril Davis, Police Missionary) :—I do not think so. " *London* (Wimbledon) (Miss T. T. Wilts) :—No. " (Poplar) (A. E. Knight, All Hallows' Shelter) :—As far as my experience goes there is no demand for greater facilities for divorce. I deal exclusively with the very low down and depraved. (Clapham and Upper Tooting) (Miss F. M. Whiting, Rescue Worker) :—None whatever. (Piccadilly) (Mrs. Ruspini, 38, Gt. Pulteney Street) :—No, not any; they do not like the idea of it, and are afraid of it. " (Battersea) (R. Cunningham, Female Mission) :—No. " (Putney) (Lady Superintendent, Rescue Home) :—As far as I know, no. I know of two cases only, good men with bad wives. For the sake of the children the woman had to be put away. One was leading her young daughter to immorality. Both men found divorce too expensive. (Bow Road) (Miss Alderson Superintendent, Red Lamp Refuge) :—No. (Commercial Road) (Sister Anna Francis) :—No. (Belgravia and Pimlico) (Miss M. E. Atkinson, Rescue Worker) :—No. (Fulham) (Mrs. Richmond, President, Rescue Society) :—No. *Nottingham* (Nottingham) (Miss A. M. Fletcher, Southwell House) :—No. " *Shropshire* (Shrewsbury) (Miss E. Lloyd, Belmont Lodge) :—As far as my experience goes, there is not. " *Scotland* (Glasgow) (Sister in Charge, St. Mary's Home) :—As far as my experience goes, I would say there is little or no demand for it. *Stafford* (Stafford) (Mr. C. H. Davis, Police Court Missionary) :—The poor would rather part than take divorce proceedings for this reason: the intelligence is of such a low order that the binding character of marriage from its spiritual and legal aspect is not of much moment to them; yet with many there is a sort of honour strictly adhered to. *Sussex* (Brighton) (Joan Mary, Mother Superior, Queen's Square) :—No. " *Surrey* (Woking) (Miss Hoar, St. Margaret's) :—If the law was the same for men and women there would not be." I do not understand that. There is a demand, but if the law was the same for men and women, there would not be?—Yes.

17,096. " *Warwick* (Coventry) (Miss Browne, St. Faith's Shelter) :—Yes. *Wiltshire* (Salisbury) (Mrs. Agnes Jones, Superintendent of District Refuge) :—No. (Winchester) (Miss Gaitskill, 1, North Walls) :—No. *Worcester* (Worcester) (Sister Jane, Field House) :—No. (Miss Paipé, Lady Superintendent, Girls' Shelter) :—No. (Great Malvern) (Sister in Charge, Home of Good Shepherd) :—No. " *Wales*—*Monmouth* (Newport) (Sister in Charge, John-the-Baptist's, Stow Hill) :—No. *Glamorgan* (Llandaff) (Deaconess Alice) :—Not amongst the poor. (Cardiff) (Sister, St. Margaret's Home of Mercy and visitor at H.M. Prison) :—None. (Pontypridd) (Lewis Llewellyn, Police Court Missionary for Rhondda Deanery) :—In my experience I have not found any demand for greater facilities for divorce. " (Barry) (Rev. J. S. Longdon, Cadroxton) :—No; the subject is never mentioned as within the possibilities of desire. *Yorkshire* (York) (Helen Bennington, The Refuge) :—No. (Hull) (Charles Rankin, Probation Officer) :—Demand not widespread." That finishes question 1. Question 2 is: "If the grounds of divorce were added to, e.g., if divorce were granted in cases of desertion, permanent lunacy, and long sentences of penal servitude, would it tend to lessen the sense of the binding character of the marriage tie amongst the poor?" The answers are given by the same persons, and are as follows:—" *Durham* (Durham) :—No, they do not realise the binding character of the tie. *Devon* (Plymouth) :—Yes. *Essex* (Colchester) :—Yes, decidedly so. (Brentwood) :—Yes. (Leytonstone) :—I cannot see how such a step could do otherwise. *Hereford* (Hereford) :—My experience leads me to believe it would do so. (Hereford) :—Yes, certainly. But among the class we work for the tie is not very binding." That would be a very low class?—Yes. These answers you are giving are from the rescue workers and the penitentiary workers.

17,097. Are they all members of your Union?—A great many are, but many are not.

17,098. I am glad you mentioned that. That explains the reference to the poor and the depraved amongst the very low class. This is a most interesting record, and I want to follow it and appreciate it thoroughly. " *Hampshire* (Aldershot) :—Yes, I feel sure it would. Our aim is to raise the morals of the poor. In my opinion we should decidedly lower the tone." That seems to me an inconsistent answer. " (Alton) :—Certainly it would tend to lessen the sense of the binding character of the marriage tie. At present among the poor there is a real sense of its binding character. *Hertford* (Bishop's Stortford) :—Yes, I think so. (Hitchin) :—Undoubtedly it would. " *Kent* (Maidstone) :—Yes; I am sure it would. " (Dartford) :—Yes. *Lancashire* (Manchester) :—Among a certain section of the poor it would be difficult to lessen the sense of the binding character of the marriage tie." That shows the class. " (Manchester) :—In my opinion it would. (Manchester) :—Yes. (Stretford) :—I hardly think it would, generally. (Burnley) :—Yes. *London* (Wimbledon) :—Yes, very much. (Poplar) :—Marriage does not prevent the very poor from forming irregular unions. I work among the very poor and depraved. (Clapham and Tooting) :—Probably it would. (Piccadilly) :—Yes, I think it would very much do so. They need to learn that the marriage tie is irrevocable 'till death us do part.' (Battersea) :—Yes. (Bow Road) :—Yes. (Commercial Road) :—Yes. (Belgravia) :—Yes. *Nottingham* (Nottingham) :—Most certainly. *Shropshire* (Shrewsbury) :—I think so. *Scotland* (Glasgow) :—Am not in a position to say, save that in this country there is no sense of the binding character of the marriage tie amongst the poor. *Sussex* (Brighton) :—Yes. *Surrey* (Woking) :—Yes. *Warwick* (Coventry) :—No. *Wiltshire* (Salisbury) :—Yes, decidedly. (Winchester) :—Yes. *Worcester* (Worcester) :—Yes. (Worcester) :—Yes. (Great Malvern) :—Yes. I am strongly against any action that would lessen the sacredness of marriage. *Wales*—*Monmouth* (Newport) :—Yes, in my opinion. *Glamorgan* (Llandaff) :—In some cases it might be desirable to grant divorce to the poor, especially in a seaport town, for desertion would practically annul the marriage vow. (Cardiff) :—Yes. (Pontypridd) :—In my opinion it would lead to immorality. (Barry) :—Yes, for in many cases the binding character is to a large extent legal and not religious. *Yorkshire* (York) :—Yes. (Hull) :—I think not." That finishes Question 2. Then Question 3: "Have you had personal experience in the working of separation orders granted by magistrates? If so, what is your experience as to the frequency of subsequent reconciliations?" The following are the answers, from the same persons in the various towns:—" *Devon* (Plymouth) :—Generally make friends again. " *Durham* (Durham) :—It is generally arranged soon. " *Essex* (Colchester) :—Often the case. (Brentwood) :—No return. *Hampshire* (Alton) :—In East London I never came across a case, and never in the country. " (Aldershot) :—For seven years I have attended the Aldershot Police Court on behalf of women, and the great majority of cases (separation orders) have resulted in a speedy reconciliation. *Hertford* (Bishop's Stortford) :—Have had little experience, and have had only two or three cases of reconciliation. (Hitchin) :—Nine out of ten cases are reconciled. *Hereford* (Hereford) :—Seldom; generally if the man will not pay, Hereford) :—Yes, many are reconciled. *Kent* (Maidstone) :—Out of 24 cases four have been reconciled. *Lancashire* (Burnley) :—Most cases come together again. (Stretford) :—Yes. At least five per cent. Greatest number are very young. (Manchester) :—I have some personal experience in separation orders, from which I believe it is rarely there is a subsequent reconciliation. (Manchester) :—Yes, there is no question subsequent reconciliation is frequent, but whether desirable is another matter." Those two answers from Manchester are absolutely different?—Yes.

17,099. " *London* (Belgravia and Pimlico) :—Small

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"experience. So far as it goes reconciliation has resulted in majority of cases. (Putney):—No, I have known people come together again. (Battersea):—Have been much in a police court and have found a large percentage of women return to their husbands. (Piccadilly):—Yes, and I believe in nine cases out of ten that there is subsequent reconciliation. *Nottingham* (Nottingham):—I have come across many women in my prison and rescue work who were separated from their husbands on account of the latter's cruelty or drunkenness. Reconciliations are frequent. *Sussex* (Worthing, A. L. Higgs, The Refuge):—Often live together again. I have known the ill-feeling toward each other last more than a year and then a happy reconciliation. Separations are granted too early. I do not know whether that is meant for "too easily"; one would naturally think it meant "too easily"?—I think they wanted a little time on probation before the separation order was granted. "Too soon" I think is the meaning.

17,100. *Surrey* (Woking):—My experience is that it would be quite sufficient if the law was carried out well by the magistrates. *Shropshire* (Shrewsbury):—No. *Wiltshire* (Salisbury):—The separation orders have generally a demoralising effect upon both husband and wife, and they often choose new partners. *Wales—Monmouth* (Newport):—That subsequent reconciliation is the exception rather than the rule in the few cases I have known. *Glamorgan* (Llandaff):—Separation orders work badly. Most of them return. More care is necessary on the part of the magistrates. Cases are not sufficiently investigated. (Cardiff):—Have not much experience, but think there is frequent reconciliation. (Pontypridd):—About 80 per cent. of the orders are superseded by reconciliation. (Barry):—No great experience. *Worcester* (Worcester):—I have known some cases of reconciliation and am sure separation (legal) is better for public morals than divorce can be. (Winchester):—Few reconciliations. *Wiltshire* (Salisbury):—The separation orders have generally a demoralising effect upon both husband and wife. *Yorkshire* (York):—They invariably come together again for economic reasons, or for the sake of the children. Then Question 4: "What have you found to be the moral effect of separation orders (a) in the case of husbands; (b) in the case of wives?" The following are the answers from the same people:—*Durham* (Durham):—(a) Immorality; (b) Ditto. *Essex* (Colchester):—In my experience I have nearly always found that the man and woman live in sin afterwards. *Hereford* (Hereford):—Bad in every way. (Hereford):—(a) Bad; (b) Not so bad if man pays. *Hertford* (Bishop's Stortford):—Misconduct in both cases. *Hampshire* (Aldershot):—Difficult to answer, but should say that the immorality, if any, commences before the separation act. *Kent* (Maidstone):—In some instances the husbands are living good lives and the wives are not. In other cases it is the opposite. *Lancashire* (Burnley):—(a) Bad; (b) Bad. (Manchester):—(a) Bad; immorality in majority of cases; (b) Good in majority of cases. The order protects the wife and she is often able to keep herself and family respectable. (Manchester):—Bad in both cases, though more invariably so as regards the husband. (Stretford):—I do not think so bad for woman as for man. *London* (Belgravia and Pimlico):—(a) Immorality; (b) Morality, so far as my experience goes. (Wimbledon):—No experience. (Clapham and Upper Tooting):—Not good in either case. (Piccadilly):—Varied; sometimes salutary. They find that after all they cannot get on without each other, and when they get over their temper are glad to make it up. (Battersea):—(a) Immorality; (b) The same in some cases, and in others starvation. (Putney):—(a) Another woman; (b) Sometimes living with another man, but never a good woman. *Nottingham* (Nottingham):—Sometimes disastrous to both, but more often in the case of the man. *Wiltshire* (Salisbury):—(a) They loose sense of responsibility; (b) Ditto. (Winchester):—(a) Tends to immorality; (b) Ditto. *Worcester* (Worcester):—My opinion is that legal

separation tends to strengthen the feeling of the marriage tie, as the wife feels husband is bound to support her as long as she remains moral. *Wales—Glamorgan* (Llandaff):—Unless they return after a short interval, each finds new partner. (Cardiff):—(a) A lessening of the sanctity of the marriage tie; (b) Ditto. (Barry):—Bad in many cases owing to the fact that the separation has been forced on the husband or wife, often through drunken habits of partner. *Yorkshire* (York):—(a) Immorality with housekeeper; (b) Destitution causing woman to live with any man who offers a home for herself and children. (Hull):—(a) Bad; (b) Bad. That is all on Question 4. Question 5 is:—(1) Does the publication of newspaper reports of divorce cases in your opinion exercise a corrupting influence? (2) Does the present publicity act as a check upon immorality? The following are the answers:—*Devon* (Plymouth):—(1) Yes; (2) No. (Shalford), (T.A. Mann, rescue worker):—(1) Yes; (2) No. It tends to increase it. *Durham* (Durham):—(1) Yes; (2) No. *Essex* (Colchester):—(1) Yes; (2) No. (Leytonstone):—(1) I cannot understand how it can be otherwise; (2) Decidedly not. (Brentwood):—The publication of newspaper reports has a bad influence, and I do not consider the publicity given to divorce cases acts as a check upon immorality. *Hampshire* (Alton):—From the testimony of men, yes. I believe publicity to be a check, but it ought to be publicity without details. (Aldershot):—I consider that newspaper reports exercise a corrupting influence and by no means act as a check on immorality. *Kent* (Maidstone):—(1) Yes, most certainly; (2) No. The publicity of divorce cases is decidedly bad for our young people. *Hertford* (Bishop's Stortford):—(1) Yes; (2) No. (Hitchin):—(1) Yes, on the young. Children even know the history of these cases. *Hereford* (Hereford):—Details should not be published; they are corrupting. (Hereford):—(1) Most corrupting; (2) On the contrary, it encourages immorality by suggestion. *Kent* (Stone Dartford) (Lady Superior, St. Mary's):—(1) Yes; (2) No. (Maidstone) (Miss Smith, 4, Bedford Place):—(1) Yes, certainly; (2) Publicity very bad for the young. *Lancashire* (Manchester):—(1) Yes; (2) No. (Manchester):—(1) Yes; (2) No. (Manchester):—I am of opinion that full details of divorce cases have a corrupting influence and tend to immorality. (Burnley):—(1) Yes; (2) No. (Stretford):—(1) Yes; (2) No.; I do not think publicity good for the poor, who are much guided by emotion. *London* (Commercial Road):—(1) Yes; (2) Not to any great extent. (Bow Road):—(1) Yes; (2) No. Publicity incites to immorality. (Putney):—(1) Yes; (2) No. (Battersea):—(1) Yes; (2) No. (Piccadilly):—(1) Yes, very much so; (2) No. (Clapham and Upper Tooting):—(1) Yes; (2) No. (Wimbledon):—(1) Yes; (2) No. (Belgravia and Pimlico):—(1) A most corrupting influence; (2) No. *Nottingham* (Nottingham):—(1) Yes; (2) No. *Oxford* (Oxford) (Miss Sharpe, St. Aldgate):—(1) I consider that such reports exercise a most corrupting influence; (2) I think it would have the opposite effect. *Sussex* (Worthing):—The free publication of divorce cases is one of the greatest evils of the day, in that it acts not only as a malignant influence, but also like a slow poison upon the morals of our younger generation. (Brighton):—Yes, in both cases much evil is caused. *Surrey* (Woking):—(1) Yes, most pernicious. *Wiltshire* (Salisbury):—(1) Yes; (2) No. *Shropshire* (Shrewsbury):—I think the publication of newspaper reports of divorce cases must do harm. *Scotland* (Glasgow):—(1) Yes, without a doubt; (2) None; rather the worse. *Warwick* (Coventry):—(1) Yes, decidedly; (2) No. *Wales—Glamorgan* (Cardiff):—(1) Yes; (2) No. (Llandaff):—(1) Decidedly; especially the Sunday papers, which are eagerly read and discussed; these are very bad for the young; (2) No, quite the opposite. (Pontypridd):—(1) Yes; (2) No. (Barry):—(1) Yes; (2) No. *Monmouth* (Newport):—(1) Yes; (2) Not in my opinion. *Worcester* (Great Malvern):—(1) Yes; (2) I do not think it acts as a check on immorality. (Worcester):—(1) Yes (2) I think such report

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"likely to increase immorality and exercise a corrupting influence. (Worcester):—(1) Yes; (2) No. (Winchester):—(1) Yes; (2) Certainly not. Wiltshire (Salisbury):—(1) Yes; (2) No. Yorkshire (York):—(1) Yes; (2) No. (Hull):—(1) Yes; (2) No." Is the other book on the same lines?—Exactly, only that is from magistrates and chief constables. I have prepared a summary with the numbers of each voting.

17,101. I will ask you a question or two on this book; we can look at the other afterwards. At the end of the second book there is a list of names of people who say they do not want their names to be published. I feel a difficulty in having these books printed unless we can do so and put the names in?—The intention was there was no objection to their names being printed, but they did not want to be called before the Commission as witnesses.

17,102. The printing will involve publicity in the end?—That they do not mind, so long as they are not called as witnesses. They have not the time.

17,103. Perhaps they are busy people?—Yes.

17,104. Then we may publish these names in due course?—Certainly; they have no objection whatever to that.

17,105. That solves the difficulty. Then there is your summary at the end of the first book. "Question 1: Is there, so far as your experience extends, a widespread or any demand for greater facilities for divorce amongst the poor?—No, 40; Yes, 1. (Hull):—The demand is not widespread. (Woking):—If the law were the same for the men and women there would be no demand. (Stretford):—Does not think there is a demand. Question 2: If the grounds of divorce were added to, e.g., if divorce were granted in cases of desertion, permanent lunacy, and long sentences of penal servitude, would it tend to lessen the sense of the binding character of the marriage tie amongst the poor?—Yes, would lessen, 36; No, would not lessen, 2. (Llandaff):—That in a seaport town it might be desirable to have divorce for desertion. (Glasgow):—That in Scotland there is no sense of the binding character of the marriage tie. (Poplar):—Marriage does not prevent the very poor from making irregular marriages. (Stretford):—Hardly think it would lessen the sense of the binding character. Question 3: Have you had personal experience in the working of separation orders granted by magistrates. If so, what is your experience as to the frequency of subsequent reconciliation?—Subsequent reconciliation, greater proportion, 19; Not so many, 5. (Salisbury):—That separation orders have generally a demoralising effect on both man and wife. (Llandaff):—More care is necessary on the part of the magistrates. Cases are not sufficiently investigated. (Woking):—That it would be sufficient (separation orders) if the law was carried out well by the magistrates. Question 4: What have you found to be the moral effect of separation orders—(a) In the case of husbands; (b) In the case of wives?—(a) Has a bad effect; 21. (b) Has a bad effect, 17. (a) Has a good effect; (b) Has a good effect, 4. (Aldershot):—That probably the immorality commences before the separation order. (Kent):—Sometimes the husbands lead good lives and the wives not. Sometimes the reverse. (Hereford):—That the effect is not bad on the wife if the man pays. Question 5: (a) Does the publication of newspaper reports of divorce cases in your experience exercise a corrupting influence? (b) Does the publicity now given to divorce cases act as a check upon immorality?—(a) Exercises a corrupt influence, 43; Does not exercise a corrupt influence, Nil. (b) Publicity does not act as a check, 40. (Commercial Road):—Not to any great extent. (Manchester):—Details have a corrupting influence. (Hereford):—Details should not be published. (Alton):—Believe publicity to be a check; but it must be without details." I think that finishes the book?—Yes, one book; the other is exactly on the same lines.

17,106. I do not think I need go through that, if we have it to study ourselves?—Perhaps you would

like to read quickly the summary at the end which gives the numbers.

(The Archbishop of York.) I think this is more important than the other.

(Chairman.) I think it is as well to go through it once for all.

(The Archbishop of York.) I will read it. The first question is:—"Is there, so far as your experience extends, a widespread or any demand for greater facilities for divorce amongst—(a) The poor; (b) The lower middle classes." The answers are as follows:—*Bedford* (Luton, clerk to magistrates and to local board of guardians):—There is no widespread demand for facilities for divorce, because people accept the situation that divorce is a luxury reserved for the rich. (Luton, Canon Mason):—Women do not desire facilities for divorce. (Bedford, Deaconess):—(a) No. *Buckingham* (Marlow, Francis C. Wethered, J.P., Remnant):—(a) No; (b) No, not in this district. (Aylesbury, clerk to justices):—(a) No; (b) No. *Carlisle* (Carlisle, clerk of the courts (Carlisle):—(a) No; (b) No. *Cheshire* (Altrincham, Mrs. Farbrick, parish worker):—(a) No; (b) No. (Chester, Mrs. Keith Douglas, guardian 19 years):—(a) No; (b) No. (Chester, H. H. Churton, clerk to justices):—(a) No; (b) No. (Crewe, clerk to the magistrates):—(a) No; (b) No. *Devon* (Plymouth, George H. Inskip, J.P.):—There is only a demand in cases of flagrant immorality. *Hereford* (Hereford, clerk to the justices):—(a) No; (b) No. (Ledbury, rector):—(a) No; (b) No. (Ludlow, vicar):—(a) No; (b) No. (Ross, Prebendary Winnington Ingram):—(a) No; (b) No. *Hertford* (Hatfield, Hertfordshire police court missionary):—(a) No; (b) No. *Kent* (Westerham, lady worker):—On the contrary, the poor are indignant. (Cobham, rector's wife):—(a) No; (b) No. *Lancashire* (Ashton-under-Lyne, leading solicitor):—(a) No; (b) No. (Ashton-under-Lyne, clerk to magistrates):—(a) No; (b) No. (Ashton-under-Lyne, relieving officer):—(a) No; (b) No. (Blackburn, hon. sec. to Nursing Association):—(a) No; (b) No. (Swinton, district nurse Bryand, five years agricultural, seven manufacturing):—(a) No; (b) No. (Swinton, Nurse Nelson, 10 years Manchester Infirmary, 17 parish nurse):—(a) No; (b) No. (Rochdale, Canon Clarke, vicar of Rochdale):—(a) No; (b) No. (Rochdale, George Petrie, J.P., Stone Hill):—(a) No; (b) No. (Swinton, vicar):—At a meeting of men's brotherhood, almost exclusively working men, show of hands taken, only three in favour of extended facilities. (Liverpool, H. H. Hornby, diocesan secretary, Grassdale):—(a) No; (b) No. (Manchester, George Hayward, clerk to justices):—(a) Yes; (b) Yes. (Manchester, William Royle, J.P., Elmwood):—(a) Yes; (b) Yes. *London* (Clapham, Mrs. Cullum, nine years' experience, secretary C.E.S.):—(a) No; (b) No. (Clapham, vicar, St. Paul's):—(a) No; (b) No. (Southwark, Deaconess Gilmore, 22 years among very poor):—(a) No; (b) No. (Battersea, Deaconess Florence Glossop):—(a) No; (b) No. (Battersea, Deaconess Maud Newton, head deaconess, Rochester):—(a) No; (b) No. Only known five cases in 20 years. (Clerkenwell, Mrs. Chapman, church worker):—(a) No; (b) No. (Holborn, St. Giles, Miss Parson, church worker):—(a) No; (b) No. (Islington, St. James', Miss Hyles, worker):—(a) No; (b) No. (Stepney, unanimous opinion of workers in 10 parishes):—(a) No; (b) No. (Walworth, Deaconess Kate):—(a) No; (b) No. Have only met one case. (Bethnal Green, head and three presidents of St. Hilda's Settlement):—(a) No; (b) No. (Clapton, Rev. E. Gardner Brown, St. James', vicar):—(a) No; (b) No. (Westminster, Mrs. Samas, Christ Church):—(a) No; (b) No. (Gloucester Road, vicar, St. Stephen's):—(a) No; (b) No. (Clapham, vicar, St. Paul's):—(a) No; (b) No. (St. Pancras, Mrs. Walter Medlicott, 18, Campden Hill):—(a) No; (b) No. (Windsor, Chief Constable):—(a) Yes; (b) Yes. *Lincoln* (Grimsby, county magistrate 29 years of parts of Lindsey):—(a) No; (b) No. *Oxford* (Oxford, clerk to justices):—(a) No; (b) No. (Oxford, police court missionary):—(a) No; (b) No. (Henley-on-

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Thames, R. Mackenzie, J.P.):—(a) No; (b) No. *Sussex* (Lewes, Sister Cooke, probation officer, rescue worker, prison visitor):—(a) No; (b) No. (Hastings, joint opinion of magistrates and chief of police):—(a) No; (b) No. *Wiltshire* (Salisbury, Rector of St. Edmunds):—(a) No; (b) No. Can only recall one case. (Salisbury, rector of St. Merlin):—(a) Only remember one case of a socialist. (Salisbury, rector of St. Thomas's):—(a) No; (b) No. (Salisbury, rector of St. Mark's):—No; (b) No. (Salisbury, rector of St. Paul's):—(a) Have heard the wish expressed once or twice. *Worcestershire* (Tenbury, clerk to magistrates):—(a) No; (b) No. *Wales—Monmouthshire* (Newport, J. E. Llewellyn, clerk to the magistrates):—(a) No; (b) No. *Glamorganshire* (Llandaff, deaconess):—(a) No; (b) No. (Glamorgan, Oliver Jones, chairman of quarter sessions):—(a) No; (b) No. (Cardiff, J.P. for county):—Does not think there ought to be one law for rich and another for poor. (Llandaff, Catalina Sankey, board of guardians, president G.F.S.):—(a) No; (b) No. *Yorkshire* (Leeds, All Souls', Miss Hebblethwaite, 25 years parish worker):—(a) No; (b) No. (Leeds, J. E. Eddison, J.P.):—(b) Yes. (Keighley, Miss Hedley, rescue worker):—(a) No; (b) No. (Bingley, G. Ackroyd, J.P., Harden House):—(a) No; (b) No. (Bradford, Joseph Farnedale, chief constable):—(a) No; (b) Yes. (Bradford, Miss Sara Sharpe, rescue worker):—(a) No; (b) No. (Bradford, George Bell, Discharged Prisoners' Aid Society):—(a) No; (b) No. (Heckmondwike, Father O'Connor, priest):—(a) No; (b) No. (Keighley, Rev. H. Gunyon):—(a) No; (b) No. (Harrogate, Rev. T. E. Dawson, Hylton House):—(a) No; (b) No. (Sheffield, Kenneth Gould, secretary Guild of Help):—No. Having lived with artizan class, the poor, and very poor for eight years, I do not think I have ever heard it suggested that the rich are enjoying a privilege. (York, Edwin Gray, high sheriff):—The poor are inarticulate. They might speak if there was a possibility of obtaining the redress. (Dewsbury, C. B. Crawshaw, J.P.):—(a) No; (b) No. (Knaresborough, W. Sheepshanks, J.P.):—In very few cases. (Skipton, Rev. J. Thorman, Christ Church, Vic.):—(a) No; (b) No. (West Riding, G. B. C. Yarborough, J.P., chairman):—(a) No; (b) No. (Huddersfield, J. A. Brook, J.P.):—(a) No; (b) No. (Todmorden, William Sutcliffe, J.P.):—(a) No; (b) No. Then comes section 2. The first question is: "In what proportion of cases of applications for separation orders which have come under your notice has the application been withdrawn, or no order made, in consequence of a reconciliation having been effected between the parties?" The following are the replies:—"Bedford (Luton, solicitor clerk to magistrates and guardians):—Number of applications since Act came into operation is 149. Of them, 58 either withdrawn or dismissed. (Bedford, deaconess):—If separation order is delayed for three months it is often not needed. *Buckingham* (Marlow, Francis C. Wethered, J.P., Remnanty):—No record, but a fair proportion. *Carlisle* (Carlisle, clerk of the courts):—In three years, 1907-9, 29 applications—13 withdrawn or dismissed. *Cheshire* (Altrincham, Mrs. Keith Douglas):—Six out of 25 cases. (Chester, clerk to the justices):—Intervention of third person often brings about a reconciliation. (Chester, clerk to the magistrates):—About one third. (Crewe, clerk to the magistrates):—Two cases withdrawn, and three dismissed out of 17 during past 12 months. *Devon* (Plymouth, George Inskip, J.P.):—In many cases it can hardly be called reconciliation; they simply live together again until they have another quarrel. *Hereford* (Hereford, clerk to justices):—No instance known. (Ross, Prebendary Winnington Ingram):—Since Act passed only one instance in whole district where there has not been reconciliation, either before the order was granted or within a short time afterwards. *Hertford* (Hatfield police court missionary):—About 50 per cent. *Lancashire* (Ashton-under-Lyne, clerk to magistrates):—70 per cent. (Ashton-under-Lyne, relieving officer):—75 per cent. (Blackburn, hon. secretary to Nursing Institution):—In nearly all.

(Swinton, Nurse Briant):—More often than not. (Rochdale, Canon Clark):—Informed on good authority 30 per cent. (Rochdale, Geo. Petrie, J.P.):—1907, 53 summonses granted, 17 withdrawn; 1908, 66 summonses granted, 21 withdrawn; 1909, 53 summonses granted, 16 withdrawn. (Manchester, William Royle, Elmwood):—They are frequently reconciled. *Lincoln* (Grimsby, county magistrate):—In a few cases application is withdrawn. *London* (Battersea, lady worker, a deaconess):—Reconciliations not infrequently effected. (Holborn, lady worker):—In seven cases out of 10 where the woman applies the man is taken back the same day. (Islington, lady worker):—When proposals for separation arise as a rule the parties agree to reconcile difficulties. (Stepney, workers in ten parishes):—In most cases reconciliation effected through intervention of friends. In the other cases women prefer separation, as they get maintenance. Men would prefer divorce, as it would save the settlement. (Walworth, deaconess):—The proportion of cases where reconciliation has not been effected is very small. (Bethnal Green, relieving officer):—Eight to 10 per cent of separation orders are cancelled owing to the parties cohabiting. (Tower Bridge police court, Cecil Chapman):—In 1909, 167 summonses, 65 withdrawn. *Oxford* (Oxford, clerk to the justices):—In several instances where separation orders had been granted, the husband and wife have come together again very shortly. (Henley-on-Thames, R. Mackenzie, J.P.):—9 out of 10. *Sussex* (Hastings, chief of police and J.P.):—In several cases. *Worcester* (Tenbury, clerk to magistrates):—99 per cent. *Wales—Monmouth* (Newport, clerk to magistrates):—75 per cent. *Glamorgan* (Llandaff, deaconess):—50 per cent. (Cardiff, J.P. for county):—Frequently happens that orders are withdrawn or reconciliations effected before summons is heard. *Yorkshire* (Leeds, parish worker, All Souls'):—The greater number are withdrawn at the last moment. (Leeds, J. E. Eddison, J.P.):—About 2 per cent. (Todmorden, W. Sutcliffe, J.P.):—1907, 6 applications, 3 orders, 3 withdrawn; 1908, 10 applications, 6 orders, 1 withdrawn; 1909, 13 applications, 3 orders, 5 withdrawn, 1 struck out, 4 dismissed. (Bradford, chief constable):—Five years preceding 1909, applications 127, orders 107. (West Riding, chairman West Riding):—About 10 per cent. (Bingley, Geo. Ackroyd, J.P.):—1907-9, 17 applications, 7 withdrawn. (Keighley, rescue worker, Miss Hedley):—About 6 out of 10 are withdrawn. (Bradford, Miss S. Sharpe, rescue worker):—Majority are withdrawn. (Sheffield, Kenneth Gould, secretary Guild of Help):—Not a long enough experience in the city. (Keighley, Rev. W. H. Gunyon):—7 or 8 per cent. (York, Edwin Gray, J.P.):—Reconciliations which are no reconciliations are often forced on the party complaining by the magistrates. (Heckmondwike, Father O'Connor, priest):—9 out of 10. (Bradford, Geo. Bell, Prisoners' Aid Society):—As a constant attendant at police court I may state that it is not infrequent that separation orders are not taken owing to reconciliation. (Leeds, chief constable):—1906, 431 applications, 329 orders given; 1907, 339 applications, 268 orders given; 1908, 375 applications, 315 orders given. Then the second question in section 2 is: "In what proportion of cases of separation orders which have come under your notice has the order been superseded at the instance of the parties, a reconciliation having been effected?" The following are the replies:—"Bedford (Luton, solicitor, clerk to magistrates):—Has knowledge of three cases of reconciliation who have again applied for separation. *Buckingham* (Marlow, Francis C. Wethered, J.P.):—A fair proportion. *Cheshire* (Chester, clerk to justices):—Perhaps one half. *Carlisle* (Carlisle, clerk of the court):—In three years 16 orders made, 10 living together again. *Devon* (Plymouth and Devonport, chief constable):—In three years 69 applications, 34 refused, 10 came together again, 13 remained apart, but very few living with others, 11 lost sight of. (Exeter, chief constable):—In one year, average of

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" three years, nine orders granted, two refused, one came together again, none are living with others. (Barnstaple, chief constable):—One year, two applications, one granted. *Hertford* (Hatfield, police court missionary):—35 per cent. *Lancashire* (Ashton-under-Lyne, clerk to the magistrates):—30 per cent. granted, half superseded by reconciliation. (Ashton-under-Lyne, relieving officer):—75 per cent. (Blackburn, hon. secretary to Nursing Association):—Frequently superseded. (Rochdale, Canon Clark):—50 per cent. (Rochdale, Geo. Petrie, J.P.):—No doubt a large proportion, but records cannot be kept as no notice is given when parties come together. *London* (Clapham, C.C.S. secretary):—Cannot state proportion. (Battersea, deaconess):—Women often apply for separation to frighten their husbands, and then try them again. Divorce would lead to fearful complications. (Battersea, deaconess):—Reconciliation frequent. Separation orders mostly applied for after desertion. (Stepney, worker in 10 parishes):—About 50 per cent. (Walworth, deaconess):—Reconciliation often effected, usually within six months. (Bethnal Green, presidents in ladies' settlements):—Reconciliations often effected. *Manchester* (Wm. Royle, Elmwood):—Frequently. *Lincoln* (Grimsby, J.P.):—In several cases reconciliation effected, generally from outside influence. *Oxford* (Oxford, clerk to magistrates):—In several cases there has been reconciliation after an order is given. *Sussex* (Hastings, chief of police and magistrate):—In many cases. *Worcester* (Tenbury, clerk):—99 per cent. *Yorkshire* (Leeds, J. P. Eddison, J.P.):—Do not remember one. (Keighley, Miss Hedley, rescue worker):—Six out of ten. (West Riding, chairman, West Riding sessions):—Should say majority, but no statistics. If possible only give orders for persistent cruelty. (Todmorden, W. Sutcliffe, J.P.):—Some certainly have, but can keep no record. (Bingley, J.P.):—Out of nine granted only three are in force. (Knaresboro', J.P.):—No official knowledge. (Bradford, rescue worker):—A great majority are reconciled." Then the third question in section 2 is: "What in your experience have been the chief causes leading up to applications for separation orders?" Following are the replies:—*Bedford* (Luton, Canon Mason):—In almost every case the application has been on the charge of desertion or of persistent cruelty or neglect to provide maintenance. Chief cause drunken habits of husband. (Luton, solicitor clerk to guardians):—Drunkenness, immorality, low view of marriage. (Bedford, deaconess):—Forced early marriages in cases where there was no affection. *Buckingham* (Marlow, Francis C. Wethered, J.P.):—Intemperance, cruelty. *Carlisle* (Carlisle, clerk of the courts):—Desertion, assaults, drink, neglect, cruelty. *Hereford* (Hereford, clerk to justices):—Drunken husband's cruelty and neglect. (Ross, Prebendary Winnington Ingram):—Ill-treatment, drink. *Hertford* (Hatfield, police court missionary):—Petty differences, extravagance of women, drink. *Kent* (Cobham, rector's wife):—In 32 years' work among poor only known one case where separation order was given in consequence of husband's bad conduct, and one divorce where boy and girl marriage resulted in wife's desertion after two days. *Lancashire* (Ashton-under-Lyne, clerk to magistrates):—Incompatibility. (Ashton-under-Lyne, relieving officer):—Drink in men, drink in women, idleness, dirt. (Ashton-under-Lyne, hon. secretary to Nursing Association):—Drink, incompatibility. (Blackburn, Nurse Briand):—Drink, temper. (Swinton, Nurse Nelson):—Cruelty through drink, careless marriages, want of self control. (Rochdale, Canon Clark, vicar):—Drink, clubs. (Rochdale, Geo. Petrie, J.P.):—Drink, improvident marriages, temper. *Lincoln* (Grimsby, county magistrate):—Too early marriages, temper, drink, interference by third party. *London* (Clapham, C.G.S. secretary):—Cruelty, failure to maintain, drink. (Southwark, deaconess):—Drink. (Battersea, deaconess):—Drink, leading to cruelty and poverty. (Battersea, deaconess):—Immorality with drink, jealousy; neglect of home; ignorance of

duties. (Clerkenwell, lady worker):—Drink, desertion. (Holborn, lady worker):—Drink, temper leading to cruelty. (Islington, lady worker):—Drink, temper. (Stepney, worker in ten parishes):—Drink, immorality, most often the men. (Walworth, deaconess):—Drink in wives, immorality or cruelty of husbands. (Bethnal Green, residents in ladies' settlements):—Drink, unfaithfulness. (Tower Bridge police court, Mr. Chapman):—Desertion, cruelty, neglect to maintain, drink. (Clapham, vicar of St. Paul's):—Drink. (Westminster, Mrs. Lomas, St. Church):—Hasty marriages. *Oxford* (Henley-on-Thames, R. Mackenzie, J.P.):—Drink. *Sussex* (Lewes, probation officer):—Cruelty caused by drink. (Hastings, joint opinion of chief of police and magistrate):—Incompatibility, drink, hasty marriages. *Worcester* (Tenbury, clerk):—Cruelty, desertion; applications rare. *Wales—Monmouth* (Newport, clerk to magistrates):—Drink, ill-assorted, living too near relations in law. *Glamorgan* (Cardiff, county J.P.):—Drink and abuse. *Yorkshire* (Leeds, parish worker):—Failure to maintain wife, husband's inebriety, betting and gambling; rarely infidelity. (Leeds, J. P. Eddison, J.P.):—Drink. (Dewsbury, Mr. Crawshaw, J.P.):—Compulsory marriages, drink, laxity of moral training, hasty marriages. (Keighley, rescue worker):—Drink. (Bingley, G. Ackroyd, J.P.):—Forced marriages, temper. (Knaresboro', W. Sheepshanks, J.P.):—Cruelty, neglect, desertion. (Todmorden, W. Sutcliffe, J.P.):—Drink, living with mother-in-law. (Skipton, Rev. W. Thorman, vicar):—Drink, infidelity. (West Riding, chairman of West Riding Sessions):—Persistent cruelty, desertion, drink, neglect of duties by wife. (Keighley, Miss Hedley, rescue worker):—Very young marriages. (Bradford, chief constable):—Habitual neglect, ill-treatment, drink, incompatibility. (Bradford, Miss Sarah Sharpe):—Forced marriages, drink, love of pleasure, unemployment, immorality. (Huddersfield, J. A. Brooke, J.P.):—Too early marriages. (Sheffield, Kenneth Gould, secretary Guild of Help):—Cruelty caused by drink. (Keighley, Rev. W. H. Gunyon):—Gambling, drink. (York, Edwin Gray, J.P., high sheriff):—Drink, ill-usage, persistent cruelty. (Heckmondwike, Father C'Connor, priest):—Drink on part of wife, laziness and cruelty on part of husband. (Harrogate, Rev. S. T. Dawson, vicar of St. Luke's):—Drink; very few applications. (Bradford, Geo. Bell, Discharged Prisoners' Aid Society):—Intemperance, unemployment, cruelty." Question 3 seems very much the same as question 2?—These are cases that have not really come into court. They state that they would come into court, but finally they did not. They were reconciled.

17,107. Then question 3 is with regard to the publication of reports of divorce and matrimonial causes. The question was: "Does the publication of newspaper reports of divorce cases, in your experience, exercise a corrupting influence? Does the publicity now given to divorce cases act as a check upon immorality?" The following are the replies:—*Bedford* (Luton, clerk to magistrates):—No reason to suppose that newspaper reports exercise bad influence. Locally understood that details are under a ban, and the Press understand that abuse may lead to exclusion. (Luton, Canon Mason):—Unquestionably corrupting, and though local papers are under a ban the non-local papers contain the details. Think that the publication fosters immorality by familiarity, and encourages ingenuity to avoid discovery and exposure. (Bedford, deaconess):—Corrupting influence. Nothing should be published but names and verdict. *Buckingham* (Marlow, Francis G. Wethered):—(1) Yes; (2) The reverse. *Cheshire* (Altrincham, lady worker):—Very harmful. (Chester, clerk to justices):—Publicity necessary, but details most pernicious. (Chester, Mrs. Keith Douglas):—Most harmful. *Devon* (Plymouth, G. H. Inskip, J.P.):—(1) Yes; (2) No. *Hereford* (Hereford, clerk to justices):—(1) Corrupting rather than the reverse; (2) Cannot imagine has any check. (Ledbury, rector):—No doubt most corrupting influence. (Ludlow, vicar):—Responsible for many evils. (Ross, Pre,

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[Continued.]

“bendary Winnington Ingram):—Undoubtedly exercises debasing influence upon the young. Does not check immorality. Only names of parties and verdict should be published. *Hertford* (Hatfield, police court missionary):—Corrupting influence. Present publication encourages immorality. *Kent* (Cobham, rector's wife):—Most corrupting. Leads to rather than checks immorality. (Westerham, lady worker):—Corrupting, no check. *Lincolnshire* (Grimsby, county magistrate):—Corrupting influence, no check. *Lancashire* (Ashton-under-Lyne, clerk to magistrate):—Details should not be printed. Does not act as a check. (Ashton-under-Lyne, relieving officer):—No check whatever. (Ashton-under-Lyne, solicitor):—Publication harmful, denounced as corrupting at a meeting of working men. (Blackburn, hon. secretary of Nursing Association):—Corrupting, especially to the young. (Swinton, Nurse Briand):—Corrupting, no check. (Swinton, Nurse Nelson):—Details corrupting, but names should be published. (Swinton, vicar):—Meeting of men's brotherhood unanimous that publication is corrupting. (Rochdale, Canon Clarke, vicar):—Reports in some papers have corrupting influence; think in no case checks immorality. (Rochdale, Geo. Peters, J.P.):—(1) Yes; (2) No. (Manchester, Wm. Royle, J.P., Elmwood):—Yes, certainly; (2) No, but names should be given. *London* (Clapham, C.G.S. secretary):—(1) Corrupting influence; (2) No check. (Southwark, deaconess):—(1) Yes; (2) No. (Battersea, deaconess):—Most harmful, accustoms readers to hear, think, and speak lightly of sin. (Battersea, deaconess):—Details encourage low ideals of married life. The publication and apparent extenuation of all but most flagrant immorality is encouragement to the vicious and lower standard of morality. (Clerkenwell, lady worker):—(1) Corrupting; (2) No check. (Islington, lady worker):—(1) Yes; (2) No. (Stepney, worker in ten parishes):—Details corrupting, judicious publicity good. (Holborn, deaconess):—Details vitiate mind and morals. (Walworth, deaconess):—(1) Most certainly corrupting among girls and young women; (2) No check. (Bethnal Green, Head and Presidents in Settlement):—(1) Unanimous answer that publication of details exercises bad influence, especially on the class just above the poorest, who can afford to buy papers; (2) Does not act as a check. (Tower Bridge Police Court, Mr. Chapman):—(1) Publication of divorce cases a very weak check on immorality; (2) Details encourage it. (Clapton, Rev. Gardner Brown):—(1) Publication must exercise a very corrupting influence; (2) No check. (Westminster, Mrs. Lomax, Christ Church):—(1) Present publication is injurious and corrupting; (2) No check. (Fulham, N. Lory, Deanery representative):—(1) Publication does an immense amount of evil. (St. Pancras, Mrs. Medicott, 18, Cambden Hill):—(1) Publication of reports of divorce cases exercise a most corrupting influence. (Clapham, Vicar of St. Paul's):—The publication of divorce cases tends to increase immorality. *Oxford* (Henley-on-Thames, R. Mackenzie, J.P.):—Am much averse to publication of divorce reports. (Oxford, police court missionary):—Untold mischief is caused by the publication of details of divorce cases, they should all be held in camera. *Sussex* (Lewes, probation officer, rescue worker):—(1) Publication corrupting; (2) No check. (Hastings, joint opinion of chief of police and magistrates):—(1) Decidedly corrupting; (2) Not a check. *Wiltshire* (Salisbury, Rector of St. Edmund's):—(1) Personally think that publication of divorce cases is corrupting. (Salisbury, Rector of St. Merlin):—(1) Harm must be done by publication of details. (Salisbury, Vicar of St. Thomas):—(1) Think that publication is pernicious. (Salisbury, Vicar of St. Marks):—(1) Most corrupting. (Salisbury, Rev. E. N. Thwaites):—(1) Details have a bad influence; (2) The fact of the divorce should be made known. *Worcester* (Tenbury, clerk):—(1) Corrupting influence; (2) No check. *Wales, Monmouth* (Newport, clerk to magistrates):—Publication with proper reticence does act as a check. *Glamorgan* (Llandaff, deaconess):—(1) Undoubtedly cor-

rupting; (2) Only as a check if names and verdicts given. (Cardiff, J.P.):—Certainly think that reports exercise corrupting influence and increase immorality. *Yorkshire* (Leeds, parish worker):—Publication of divorce cases a most dangerous influence. (Dewsbury, C. Crawshaw, J.P.):—(1) Present publication is corrupting; (2) Only names and bare facts should be given. (Keighley, rescue worker):—Publication of cases dangerous to all classes. (Bingley, G. Ackroyd, J.P.):—Corrupting influence. (Todmorden, W. Sutcliffe, J.P.):—Corrupting influence, but a check if names are given. (Wakefield, S. Sanders, Governor H.M. Prison):—Most corrupting, encourages immorality. (West Riding, Chairman West Riding Sessions):—(1) Corrupting; (2) No check. (Bradford, Chief Constable):—In interest of morality of young people, of utmost desirability that details should not be published. (Bradford, Miss Sarah Sharpe, rescue worker):—(1) Corrupting; (2) No check. (Bradford, Discharged Prisoners' Aid Society):—(1) Yes; (2) Very doubtful. (Heckmondwike, Father O'Connor, priest):—Publication does more harm than good. (Skipton, Rev. N. Thorman):—(1) Yes, I think so; (2) Not in my opinion. (Knaresboro', W. Sheepshanks, J.P.):—Cannot answer from experience. (Harrogate, Rev. T. E. Dawson, Vicar of St. Luke's):—(1) I think so; (2) No, it tends to increase immorality. (York, Edwin Gray, J.P., high sheriff):—The detailed reports of divorce cases are undoubtedly most demoralising. (Keighley, Rev. W. H. Gunyon):—(1) Certainly a bad influence on some; (2) If only names and verdicts could be given it would not injure the young. (Sheffield, Kenneth Gould, Secretary, Guild of Help):—(1) It is good that divorce cases should be published, but not details. Then section 4. The question is: “If divorce were made cheap and were allowed in more cases of desertion, would the result, in your opinion, tend generally to the promotion of morality amongst (a) the poor, and (b) the lower middle classes, or in an opposite direction.” The following are the replies:—*Bedford* (Luton, clerk to magistrates):—If divorce were made cheap and allowed in mere cases of desertion I think it would tend in the direction of morality. Consider present law most unjust in cases of desertion, extreme drunkenness, and persistent cruelty. (Luton, Canon Mason):—That poor women who are permanently deserted by their husbands, or whose husbands are immoral or brutal, need more protection than the separation order gives them, and in such cases facilities for obtaining divorce would tend to morality. (Bedford, deaconess):—Re-marriage among the poor might in some cases take the place of cohabitation, and thus in one sense make for morality. But this would legalise an ethical morality below the Christian code, and therefore be a backward step. Among the lower middle classes it would do no good at all. *Cheshire* (Chester, lady guardian):—Disastrous to cause of morality. (*Hereford* (Hereford, clerk to justices):—Would increase immorality, if allowed for desertion without adultery. (Ledbury, Rector):—Would lead to immorality. (Ludlow, Prebendary Winnington Ingram, Vicar):—Would increase immorality. (Ross, Prebendary Winnington Ingram, Vicar):—Extended facilities for divorce would increase a demand, to the great detriment of public morals. *Hertford* (Hatfield, police court missionary):—Very much against morality. *Lancashire* (Ashton-under-Lyne, solicitor):—Would be national disaster. (Blackburn, hon. secretary to nursing association):—Would not tend to morality. (Swinton, Nurse Briand):—Would not help morality. (Rochdale, Canon Clarke, Vicar):—Consider would be against promotion of morality. *Lincoln* (Grimsby, county magistrate):—Tend to immorality. *London* (Clapham, C.G.S. Secretary):—Would not tend to morality. (Southwark, deaconess):—Most harmful. (Battersea, deaconess):—Very much tend to immorality. (Battersea, deaconess):—Divorce allowed for desertion would lead to great increase, and less contentment in marriage. In lower middle class would encourage

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[Continued.]

"the loose ideas of marriage prevalent in upper classes. (Clerkenwell, lady worker):—Tend to immorality. (Holborn, lady worker):—Would not promote morality. (Islington, lady worker):—Tend to immorality. (Stepney, worker in ten parishes):—Bad for morality. Better make it more difficult and expensive for the rich. (Walworth, deaconess):—Tendency would be towards immorality. (Bethnal Green, residents in ladies' settlement):—Would not promote morality. One answers that in a few cases it would enable women to do legally what they do now illegally. *Wales, Monmouth* (Newport, clerk to magistrates):—Would probably lead to multiplication of marriages of divorced persons. *Glamorgan* (Llandaff, deaconess):—Would lead to immorality. (Cardiff, J.P.):—Do not think it would promote morality. *Sussex* (Lewes, probation officer):—Would not promote morality. (Hastings, joint opinion of chief of police and magistrates):—Would not help morality. *Yorkshire* (Leeds, parish worker for 25 years):—Would increase immorality. (Huddersfield, J. Brooke, J.P.):—Would tend to immorality. (Wakefield, J.P.):—Divorce generally to be deprecated. (Leeds, J. E. Eddison, J.P.):—Not much morality. (West Riding, Chairman West Riding Sessions):—Would promote immorality. (Todmorden, W. Sutcliffe, J.P.):—Would promote immorality. (Bingley, George Ackroyd, J.P.):—Would tend generally to injure morality. (Keighley, Miss Hedley, rescue worker):—Disastrous to morals of poor and lower middle classes. (Dewsbury, C. Crawshaw, J.P.):—Cheaper and easier divorce would not promote morality. But it is a hardship that a good man or woman cannot get divorce from an immoral wife or husband. (Skipton, Rev. N. Thorman):—Would promote immorality. (Bradford, Miss Sarah Sharpe, rescue worker):—Would increase immorality. (Keighley, Rev. W. H. Gunyon):—Immorality would be generally greater. (York, Edwin Gray, J.P.):—There would be the legal sanction of marriage instead of the custom of living together, and would be an advantage to the children. (Heckmondwike, Father O'Connor):—In an opposite direction as to both (a) and (b). (Harrogate, Rev. G. S. Dawson):—Would not promote morality, but the contrary. (Knaresboro', W. Sheepshanks, J.P.):—The cheapening of divorce would not tend to the promotion of morality. (Bradford, George Bell, Discharged Prisoners Aid Society):—No, I think not. (Bradford, chief constable):—Amongst the poor I do not think so, but amongst the lower middle classes I think it might have that tendency." Then at the end there is a summary?—Yes.

17,108. "Section 1, Question 1, Is there, as far as your experience goes, a widespread or any demand for greater facilities for divorce amongst—(a) The poor; (b) The lower middle classes. Answer:—(a) No, 72; Yes, 3. (1) Only heard demand in case of flagrant immorality (J.P.). (2) Heard wish expressed once or twice (Vicar). (3) Ought not to be one law for rich and another for poor (J.P.). (4) In very few cases (J.P.). (5) Poor cannot express wants (High Sheriff). (b) No, 67; Yes, 5. Section 2, Question 1. (1) The majority are of opinion that the percentage of reconciliation is high. (2) That they come together either just before going into court or soon after. (3) One answers that she has known of reconciliation after a separation of twelve months. (4) If separation orders were delayed for three months they would seldom be needed. (5) That cases are often reconciled through the tact of a wise friend. The following percentages of reconciliation are given:—*Llandaff*, 50 per cent.; *Tenbury*, 99 per cent.; *Ashton-under-Lyne*, 70 per cent.; *Newport*, 75 per cent.; *Ashton-under-Lyne*, 75 per cent.; *Hatfield*, 50 per cent.; *West Riding*, 8 to 10 per cent.; *Rochdale*, 30 per cent.

	The Number of Applications.	Withdrawn or dismissed.
Luton	149	58
Altrincham	25	6
Crews	17	5

	The Number of Applications.	Withdrawn or dismissed.
Rochdale	172 (Three years)	54
Holborn	10	7
Tower Bridge Police Court	167	65
Todmorden	29	9
Bradford	127	107
Bingley	17	7
Leeds	1,145 (Three years)	912

"Section 2, Question 2, Percentages of reconciliation:—*Stepney*, 50 per cent.; *Ashton-under-Lyne*, 2 per cent.; *Rochdale* 50 per cent.; *Keighley*, 75 per cent.; *Bradford*, 50 per cent.; *Tenby*, 90 per cent.; *Newport*, 30 per cent.; *Hatfield*, 35 per cent.; *Chester*, 50 per cent.; *Lyne*, 30 per cent. Section 2, Question 3, What in your experience have been the chief causes?—

7 officials state	desertion.
22	" " cruelty.
46	" " drink.
5	" " immorality.
11	" " early marriage.
4	" " neglect.
6	" " incompatibility.
1	" " extravagance.
3	" " idleness.
1	" " dirt.
6	" " temper.
1	" " want of self-control.
1	" " clubs.
1	" " interference by mother-in-law.
2	" " ignorance of duties.
2	" " unemployment.
1	" " gambling.
1	" " laxity of moral training.

"Section 3, Does the publicity of newspaper reports of divorce cases, in your experience, exercise a corrupt influence? Does the publicity now given to divorce cases act as a check upon immorality?—(a) Exercises corrupt influence, 57; Does not exercise corrupt influence in any case; (b) Publicity does not act as a check, 50; Publicity necessary, but details pernicious, and only name and verdict published, 13. Section 4, If divorce were made cheap, and were allowed in mere cases of desertion, would the result, in your opinion, tend generally to the promotion of morality amongst (a) the poor, (b) the lower middle classes, or in an opposite direction?—

(a) That divorce (cheaper) would not tend for morality	44
That divorce (cheaper) would tend for morality	3
Doubtful	1
(b) Lower middle class—opposite direction	1

"The evidence was supplied by 17 county and borough magistrates, 9 clerks to the magistrates, 1 solicitor, 1 relieving officer, 3 chief constables, 2 police court missionaries, 2 prison visitors, 8 hon. secretaries to societies, rescue G.O.S., &c., 2 rescue workers, 6 deaconesses, 17 vicars, 6 parish workers, 2 guardians, 2 rectors' wives, 2 district nurses, 10 workers in 10 parishes." I am afraid it has been a labour but a very useful one. The differences of opinion on the first point show a large majority in favour of one view of thinking?—Yes, decidedly.

17,109. They also show in the first book, in all those cases of separation where they are not reconciled, that the consequences have been disastrous?—Yes.

17,110. Immorality ensues?—Yes, where there are no reconciliations.

17,111. The books show almost a universal opinion against publication, and express views as to its corrupting influence?—Yes.

17,112. The points of your proof can now be taken rather shortly. You say that the working classes, who are striving to bring up their families respectably and to respect marriage, are convinced that to cheapen divorce would injure the thoughts and minds of their boys and girls, leading them to enter upon matrimony more lightly?—That is felt very strongly, I think, by

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all our women, not only our own women, but some of the Nonconformists. I was very anxious to know what they felt about that.

17,113. Then you say they also feel that it will be an injustice to them that a neighbour who has sinned should be allowed to marry again, and to be made respectable by law. That seems to me to be a remarkable statement, that a neighbour who sins should not have an opportunity of being made respectable by law?—I know in the special case the woman was so bad I do not think the law could have made her better.

17,114. What do you mean by this: "The people are feeling very strongly that they are having no voice in this important question"?—The respectable working women, for whom I appear, have no chance of coming before the Commission, and do not appear in court, so that they do not come into contact with anyone to speak for them.

17,115. They thought that their view would be voiced by you?—Yes.

17,116. We have done all we can to invite representatives of persons?—Yes, that is why they wanted me to come, and they felt it strongly. They have done more than help.

17,117. I hope they will be satisfied?—I hope so. On one occasion at Carlton, near Skipton, where they voted against it, the next morning three of the mothers met and said they could not sleep for thinking about this evil coming near them, and they wrote out in an illiterate way the resolution, and went round the village, and brought in the names of 50 women to the head of the branch, much to her surprise.

17,118. They were all married women living respectable and proper lives?—Yes, working women. They said they wanted to help her when she came before the gentlemen in London. The "her" was me. Those were the only signatures I brought in.

17,119. You have substantially expressed all you have to say in the next paragraph about the people in this class thinking that there is a deep religious significance in their vows, and that they ought to remain together for better or for worse?—Might I read one or two extracts that have been said at the meetings. I will not weary you. These are from the people's own hearts. The heads of the branches have written them. I will not give the names, I will only give the extracts:—"It will put in people's heads who would never have thought of parting." "We don't want none of these things." "A pity these courts were ever invented." "We are married, and we'll abide by our men." That is very strong amongst these people. "There is too much divorce going on, and the rich set a bad example to their poorer neighbours." "You know, mum, we poor folk marry for love, but the rich for money gains and such like, and it is not us poor folk who want divorce courts, it is the rich." Then another says, "It is a shameful thing to try and thrust this upon us. We don't want it, it will make it much harder in training our girls." One woman told me the men in the yard were very anxious to sign the resolution. One man said, "Why don't they get a resolution for us to sign, asking for lessening the divorce courts, and doing away with it? Let the rich folks do as the poor, get separation orders. They mostly come together again after a week or a month at most." Then, "It will put divorce into the people's minds who would never think of it, and will make the young ones immoral." "What is to become of the children?" "We don't want none of that." "I don't hold with that." "My husband will be glad to hear about this (the resolution). It makes him so angry to read about them divorce courts. He don't hold with them at all." Then others are, "The law of divorce should never have been made." "Divorce sets a bad example to the young, and when got it affects their whole lives." "Women should be encouraged to preserve, so as to keep their self-respect." "Easier divorce would be a great temptation to people to set about thinking how they could arrange to get it." Then comes the one I have already given you.

17,120. One remark strikes me as interesting, that the rich and poor should be left to get separation

orders. How is that consistent, in its ultimate object and aim, and end with this third or fourth category of answers, that it always leads, unless reconciled, to most disastrous results. There seems to be a uniformity of testimony about that?—I think the great proportion of separation cases come together.

17,121. That we have had to consider, by making an order for a temporary time. Where they do not come together I am struck by the fact that the returns of most of your communications show such words as these "bad," "parties take other partners," "live in immorality." Therefore, where you have not the freedom of divorce you seem to produce that terrible result. It is uniform from everyone of your correspondents who deals with it?—That brings us to the hard cases we all know of, but we do not wish to help the few at the expense of the many. I think that is the feeling of the respectable working women.

17,122. I was dealing with the statement "let the rich folks do as the poor, get separation orders." The consequences seem to be so disastrous except where they are reconciled. Therefore that is rather an inference to consider which may or may not be based upon what has just been said. Then in your proof you say that reconciliations are often brought about by a third person?—Very often. We have an extremely interesting case just now in Bradford where reconciliation has been effective.

17,123. Separation orders is your next point. You say in numberless instances where separation orders have been granted, couples have subsequently become reconciled. In Manchester alone during the last three years there have been 1,200 cases, half of whom are living together again?—Yes.

17,124. You suggest that a probation officer should be appointed by each court to receive a fair salary, with the object, I take it, of seeing people to prevent their applying for separation orders?—Yes, seeing how very often we personally can prevent people coming into court to be separated.

17,125. Where drink is the cause of separation you think that they should be sent to an inebriate home?—That is a very strong wish.

17,126. Then you say that the laws of separation should be the same for husbands and wives?—In point of cruelty. Either cruelty should be taken out for one or taken out for both.

17,127. You think that the Act of 1895 should have an addition, placing the husband in the same position as the wife?—No, only on the question of cruelty. They feel that very much. I think that ought to be equal or done away with altogether; and also forcing the wife to leave the home before she applies for a separation order. We feel very strongly about that.

17,128. We are quite alive to that point. Then you say that the maintenance money should be paid to the wife by a third person. You mean to a third person for the wife?—The probation officer.

17,129. I think you may take it that point has been very fully before us?—The women have spoken very strongly about that.

17,130. The last point is the widespread desire of the working classes that details of divorce cases should be kept out of the papers. Mothers bitterly complain of the tone of the cheaper papers, especially of the Sunday press, which through the power of suggestion is destroying the moral sense of their boys, and poisoning the minds of both sons and daughters. That, I take it, is what is expressed in those returns, and is your view?—Yes, and with special stress on the Sunday press.

17,131. (*The Archbishop of York*.) In the first book you have submitted the workers, whose opinions you have taken, I think you make clear are not workers of your Union?—Not at all. Some may be, but they are quite outside our Mothers' Union. We have simply taken their opinions as the opinion of women who are working amongst the very poor. Such women as Mrs. Ruspini and Miss Sarah Sharp and other women of great experience say that their work, which is difficult now, would be 100 times more difficult if cheaper divorce came.

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17,132. You would say those who have written the answers which are contained in this first book are those who have been dealing with a very low and depraved class?—Yes.

17,133. Would you not say, from your experience, that that is a class which in any case pays very little heed to the obligations of marriage?—Very little, but several of the workers, such as Mrs. Ruspini, have told me that so many more married women were coming under their notice, and that they have been able through wise advice and counsel to bring them back to their homes and husbands.

17,134. The class with which these workers are dealing is a class which already pays very little heed to the marriage tie?—Yes.

17,135. Therefore, if among them the effect of separation is what is called immorality, it does not follow that they will be model or respectable even when married?—That is quite true.

17,136. In other words, would you say from your experience that the effect would be different if the investigation had been conducted among the more respectable working classes?—I do not think it would be so low as it is amongst this certain class of women. It certainly would not be.

17,137. (*Chairman.*) I ought to thank you very much, and your association, for the trouble that they must have taken in preparing your proof and these books, and also for the very pleasant and kind manner in which you have given your evidence?—Thank you very much. I hope if I have not made my cause clear you will consider it is my fault and not theirs. May I leave these; these are cases of reconciliation from different parts of the country. I think they are very valuable.

17,138. Are these not in the books?—No. The following are cases of reconciliation between separated parties:—

Cambridge.

(1) A man sent to prison for five years for attempting his wife's life, when he came out she received him back and has brought him to live a right life.

(2) A man who deserted his wife, after some years he returned and she forgave him, they were reconciled and he is behaving well.

(3) A man and his wife separated for the man's wrong-doing, now living happily.

(4) A woman had a separation order because the man refused to support her. He is now doing well by her.

(5) A couple separated for six months for the man's fault, wife determined to be patient and say nothing, all came right. He is now a splendid husband.

(6) A case of separation for some years, now reconciled with the happiest results.

(7) Same as 6.

(8) Separation which lasted from Friday to Sunday, happy making-up.

(9) Separation for a few weeks. Happy life for both followed the coming together again.

(10) Case of separation, home sold up, parties came together in a few weeks with complete success.

(11) Couple quarrelled, had a separation order, but in a short time were happily reconciled.

(12) Separated couple, came together, are not happy, but agree to "jog along" in union.

(13) Man and wife separated, with allowance of 7s. 6d. a week for the woman. She took her maintenance one week, but by the end of the second week the quarrel was made up and she had her full money in her husband's company.

(14) A couple separated through fault on the man's side. He developed pneumonia, the wife went back to him, and they wished for re-union, but the man died.

(15) A young married woman went wrong, separation followed, and the wife went back to her mother. After a while the man forgave and took her again.

(16) A young couple separated through the husband's wrong-doing. He had an illness and was six weeks in a convalescent home, after which the wife overlooked his faults and reconciliation ensued.

Bradford.

(17) A young wife, with two children, living in Bradford got into debt. The income was 18s. a week, and the husband, who was steady, forgot that a wife needed companionship, and went every evening to his club. She confided her difficulties to a neighbour, who paid the debt and persuaded her to go away with him. After a week she realised what she had done and wrote to her husband begging to be forgiven. He was furious, and would have got a divorce had it been possible. The wife went to a village nurse and did the housework, and constantly wrote home. The husband did not for some time see his share of the sin, but is now relenting, and will probably take her back in a very short time.

London.

(18) A lady married a man many years ago, who was irritable and so difficult to live with that she decided to get a separation, and then discovered that there were grounds for a divorce. She came to London to consult a solicitor and found the expense was too great, and decided to wait for a year and get the money. When she returned home the husband expressed great penitence and asked for forgiveness. He died early in 1910, after 20 years of happy married life, and the widow asked her sister to write and tell me that had divorce been cheaper she could not now think of this happiness, nor remember her husband with love and admiration.

(19) Mr. Holmes, the late City missionary in London, told me that in his experience among the poor he had only met with one case where he thought the wife ought to have a divorce, and he told her more than once that if she wished it he would get the money. She replied that she had married her husband for better and for worse, and she had hopes that he would turn out a good man. At the present time this man is sidesman in a church in the East End where Mr. Holmes is a churchwarden, and he never ceases to be grateful to his wife for her fidelity and help.

The following are cases, not of reconciliation, but pointing our moral:—

(1) A husband who is in a position to obtain a decree in divorce, but who refuses to do so, and keeps his erring wife with him, saying he took her for adversity as well as for prosperity.

(2) A husband who suffered grievous wrong but would not expose his wife to the Divorce Court, and obtained separation (judicial, I believe).

(3) My daughter has been separated from her husband for six years. He was so brutal. She is broken-hearted, but she lives in hopes. A working mother's words.

(4) A clergyman's wife eloped with her cousin. He did not seek a separation but waited, and finally, on his wife's repentance, looked for a new sphere of work and took her back. They are now very happy.

(5) A woman came to Mrs. Davidson's sister (wife of the Archbishop) saying I don't know what I have done that a lady should advise me to get a divorce. My man may be a brute, but he's my husband.

Mrs. CHURCH called and examined.

17,139. (*Chairman.*) You are the wife of the Vicar of St. James, Curtain Road, London, East?—Yes.

17,140. You have volunteered to give evidence before this Commission?—Yes.

17,141. You have been a worker in the Mothers' Union for 12 years, and you are the wife of a clergyman

whose work has been entirely among the poorer classes for nearly 18 years?—Yes.

17,142. Is that in the East End of London?—Yes.

17,143. Would you say there is any desire amongst the people for increased facilities for divorce?—No large desire, in fact, I should say no desire. In our

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18 years in the East End we have never had one request for a divorce.

17,144. We have men who represent the poor legal aid societies who give us rather a different view. Do you think it is because the difficult cases do not come to you, but go to some lawyer or some person to advise them?—We are aware that there are a number who go into the courts and take their grievances, but our work is among the lowest people and the roughest, and even when a man is brutal we do not find that they desire to be freed.

17,145. Does not that arise from the fact that they cannot afford to go to the courts?—I think not.

17,146. You have had a large experience, but is your work amongst church people or amongst all kinds?—A very small proportion go to church, but we know all our people well. We have been in Stepney, Hackney, and now we are on the borders of Hoxton and Shoreditch.

17,147. You think if they wanted divorce the working people would make their voice heard?—I do.

17,148. Do you think if divorce were made easy that they would think more lightly of the marriage vow?—I am afraid they would. That seems the only thing that binds some, the feeling of obligation.

17,149. What do you mean by making divorce easy? What is meant by the word "easy"?—Giving them other grounds for divorce and bringing it financially within their means.

17,150. Suppose there is a law, would your people think it an injustice that they should be allowed no means of getting to the tribunal?—I do not find that they consider it an injustice. There are certain things which we know are denied to us as poor people which the rich enjoy, but I cannot find that our people think it would help them in any way.

17,151. How do you find in your district the people live when they get into trouble? Have you had cases of separation?—Many. We have intimate friends who have seen the ins and outs of Brixton and Pentonville, and who know the rough side of life.

17,152. What happens when these people get separated?—I do not think we have had more than five or six legal separations; we have had a fair number where they have separated and come back to one another.

17,153. In those legal separations, the five you have mentioned, what do you find?—At the present time, one man we have sent on board ship to Australia as a steward, and we are in hopes by the time he comes back that he will have fallen in love with his wife again, and they will have a happy home.

17,154. What about the other four?—There is another one where the man has disappeared entirely, probably one of those you have spoken of who have gone to America; but the wife is living happily, doing the best for the children, and she has never made the least request to have a divorce.

17,155. Has he gone for good or is he sending her money?—He is not sending any money, and has not done so for a very long time.

17,156. You said that your people do not wish, as a community, to be judged by the wishes of the people who appear in the courts. You recognise that a good number do go to the magistrates' courts and the Divorce Court?—Yes. A good many of our people wonder if this Commission realises how many thousands of the working classes bear the sorrows of life, and may have the same difficulties as those who appear in court, but they do not ask for redress.

17,157. Do you think that is because they know they cannot get it?—I do not think so.

17,158. Then you proceed to say if working people were divorced it is extremely doubtful if they would trouble to marry again. What is the meaning of that. Do you mean they would live together?—I am afraid a great many of them would lead immoral lives. If a man or woman wanted to be divorced our opinion is that after divorce they would not trouble to re-marry.

17,159. You go on to say that there are numerous widows and widowers with families who are living together without marriage?—That is true.

17,160. That seems to indicate a low standard of morality?—I suppose it does indicate to a certain degree a low standard, but I find it among the elder men and women. Men and women of middle age do not trouble to re-marry. It is a great difficulty in our work.

17,161. Your view is that separation orders are necessary and useful?—They are necessary because there are times when we are obliged to have separation. The cruelty is so great that it endangers life.

17,162. Did you hear the statistics read of the result of the separation orders and the way they operate?—I did, and I am afraid I agreed with his Grace, the reason is that the people were living immoral lives, and that was the cause of the separation. That is the great point in the East End.

17,163. Frequently people separate without troubling a magistrate, but only for a time, and come back to one another. Then you proceed to the general remark, if the high standard of the sanctity of married life is lowered, the very foundations of home life will be cut away, and there will be let loose on society some terrible evils, the harvest of which will be reaped by our sons and daughters. Then as regards the last point, your view is that you object strongly to the publication of the details of these improper cases?—Yes.

17,164. Do you find that the papers are read by the young people?—Yes, the young men in my Bible class I learn it from. I do not think other people read them very much.

17,165. You think that they work mischief?—I am afraid it does from what I have heard from them.

17,166. (*The Archbishop of York.*) When you have been speaking of the class that you have specially to do with, with regard to these separation orders, do you think even if they were able to get divorce that they would trouble to avail themselves of it?—I doubt it very much.

17,167. Do you wish to convey that already their manner of life is such that they take out separation orders against one another for various purposes, that they have not been regular before and are not regular after, and even if they can get divorces they would not avail themselves of them?—I am afraid they would not.

17,168. They would be content to go on as they are?—I am afraid so.

17,169. (*Mr. Burt.*) You said that there is no large desire among the people. Are you referring to the people of the East of London?—Yes, the people among whom I work. I take it from the fact that we have never had one request, and we have lived an intimate life among these people for 18 years.

17,170. Did you say there was one request?—No, not one.

(*Chairman.*) Thank you very much indeed for your evidence. I am very glad that we have been able to dispose of you to-day, and I hope for your convenience.

(*Witness.*) Thank you very much, it is very kind of you to say that.

Adjourned.

Winchester House, St. James's Square, London, S.W.

TWENTY-SIXTH DAY.

Wednesday, 8th June 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The Right Hon. The EARL of DERBY, G.C.V.O.,
C.B.
The Lady FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.

Sir LEWIS T. DIBDIN, D.C.L.
His Honour Judge TINDAL ATKINSON.
EDGAR BRIERLEY, Esq.
The Hon. HENRY GORELL BARNES (*Secretary*).

Mr. WILLIAM ELLIS HUME WILLIAMS, K.C., called and examined.

17,171. (*Chairman*.) You are one of His Majesty's Counsel, and I think you took silk in 1899?—Yes.

17,172. Since that time have you been employed in a very considerable number of cases in the Divorce Court, and, as you say in your proof, as it happens, largely cases in which what are termed the middle and upper classes have been involved?—Yes.

17,173. I think the first point you deal with in your proof is the question of the publication of reports of trials in the Divorce Court?—Yes.

17,174. Will you kindly state in your own way the views you have formed?—I have formed a very strong opinion to the effect that publication is a powerful deterrent, and, on the whole, I think it would be better not to alter the existing practice relating to the reports of cases, except in the way I will suggest in a moment. I think there are many people to whom the mere fact of divorce would have little terror, a statement which of course applies most strongly to a co-respondent liable to be charged with adultery—but I believe that what is very much feared is the publicity liable to be thrown upon the intrigues and intimacies incident to the offence, the thought that passionate love letters and sentimental episodes may be made the subject of ridicule, laughter, and comment, in my opinion, will, and often does, act as a factor in restraining men and women from following guilty inclinations. If they are ever restrained by the fear of detection, as I think they are, if it is the fear of publicity and public opinion which chiefly restrains them. To many, particularly to a co-respondent, publicity is the only form of punishment that he receives, except in cases where damages are claimed and recovered against him. Possibly it may be said that sometimes he has to pay the penalty of his misdeeds by being forced by public opinion to marry the respondent when he might not desire to do so, but the mere publishing, as is suggested, of the names of those who have been parties to a divorce case, and the result, without giving the facts, would, in my opinion, have no deterrent effect at all. Then there is another consideration. The world in the 20th century is apt to differentiate, and I think justly, between the character of the different cases which are determined, and to form an opinion which often means a great deal to the parties as to whether or no it would be right that they should be what is called "received in society" in the future. There are cases in which the conduct of an erring wife and of a co-respondent may be such as on the one hand to deserve universal condemnation, or they may be such as to be worthy of little more than pity and commiseration, and to shut out all the facts under which a woman has been divorced and to leave on record merely the fact that she has been, would, I think, under modern conditions, be unfair. I admit that the publication of details of divorce cases amounts to an evil, although I do not think that the more respectable newspapers err greatly

in this respect, but I think the suppression of reports would lead to a still greater evil by removing that which a certain class of society alone dread as the result of misconduct. I would give the judge a discretion to suppress reports which, in his opinion, would form injurious reading, but I think it should be sparingly exercised, and I would insist on this, that the parties should never have the means of knowing before trial whether or no the case will be reported.

17,175. Do you not think that would impose a very difficult duty on the judge, practically revising every case he tried? His time is somewhat limited as it is?—I would not suggest that he should exercise the jurisdiction except when the details arise, the publication of which in his opinion would be injurious during the course of the trial.

17,176. What is injurious—what is conveyed by that?—I should think prurient reading.

17,177. Is not that already checked by the statutory prohibition of publishing indecent details?—Matter may be prurient which does not amount to indecency.

17,178. Do you think you have given sufficient weight in this opinion to what has been placed before us as the enormously bad influence on the public of reading all these cases, especially by young people?—The very bad influence which it would appear to me is exercised on young people can only be derived from reading examination and cross-examination upon matters which approach indecency. Those I would have suppressed, but the general facts and the outlines of the case should, in my opinion, never be suppressed.

17,179. Is there not a practical difficulty in that?—I should venture to think not; when the case is being tried, I should have thought it would be obvious to judge and counsel when a certain phase of it is approached, a phase which should not be published in the newspapers.

17,180. The next point is with regard to the duty to reconcile. I should like to hear your views about that?—I may direct my attention to that, because I read what was said before this tribunal upon that point some time ago, and I presume it had some effect on the minds of the Commission. I should like to say a word or two upon the suggested duty of reconciliation to be placed on our tribunals in imitation of the foreign system. I do not think such an innovation necessary or desirable at any stage of the proceedings. In my experience, whenever there is the least chance of a really happy reconciliation being effected, an attempt is, as things at present stand, always made first by the counsel, and secondly by the judge who tries the case.

17,181. Is it not a little late in the day to attempt it? The costs have been incurred by that time?—I think I ought to have said, first by the friends of the

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[Continued.]

parties, and then by the counsel, and ultimately by the judge.

17,182. Have you seen the recent statistics published in Germany on the result of the efforts made at intervention and reconciliation by the judges?—I am afraid I have not studied them.

17,183. They have not been put forward before us, therefore I am only taking what I am told, but I have seen the statement made that one-third of the whole cases that come before the German judges are stopped by the intervention of the judge at the beginning?—Does that result in the ultimate happiness of the parties? That is rather my point. It often is done, and, as I suggest, it is very difficult for the parties to resist pressure brought upon them, particularly by the judge. Whether it results in the ultimate happiness of the parties or not I very much doubt. The judge is often able to effect a reconciliation, but my experience is that such reconciliations, when effected, very seldom succeed permanently. The function of the judge is to settle the disputes between the litigants on well-defined principles, and not, except in extreme cases, to give advice or extra judicial interference, which the parties find it difficult to resist, but which they often privately resent. It is seldom that a case comes into court without the friends of the parties having done their utmost to intervene and make up the differences, and if the parties once reach the court it is usually because they desire the decision to which they are entitled.

17,184. Now with regard to county courts?—With reference to divorce in county courts, I think, on the whole, some such scheme is desirable. I do not think the suggested system of taking the evidence of the parties in the country by means of depositions or affidavits, and then trying the case in London, is at all practicable.

17,185. Your view would be that which has been expressed, that it is essential that the judge should see the witnesses?—Absolutely essential.

17,186. More especially the parties?—More especially the parties. The Divorce Court is the court among all others in which it is essential that the witnesses should be seen and heard by those who have to determine the issue. All sorts of considerations—affection, sentiment, and honour—affect the minds of those who are parties to a divorce suit, and there are many who would not under ordinary circumstances tell a lie who think themselves justified in doing so when a woman's honour or reputation is at stake. It is at present, in my experience, sometimes very difficult to discover which of two conflicting stories can be true, but without seeing the witnesses I believe it would be often quite impossible. If jurisdiction is given to the county courts, I do not think it should be given to all. The circuits should, I think, be grouped so as to give to a few county court judges only the necessary jurisdiction. I would suggest that such judges should set aside a special day, or two days if necessary, say, once a month. The procedure in the local registries should, I think, remain as at present.

17,187. There is no procedure: I do not follow that?—I mean the service of the petition.

17,188. There are no proceedings in the district registry at present?—It is confined to probate?

17,189. Yes. You mean you would permit the proceeding in all the registries of the county courts, or only in the High Court registries?—I should leave the procedure as it stands, subject to this: leave should be given to the parties after service of the petition to apply for a trial in the county court.

17,190. The procedure should be conducted in the High Court registry, you mean?—Yes, the registrar having power to make such an order, subject to appeal, when satisfied that the means of the parties made it practically impossible for them to come to London, unless such an order is made the practice to continue as at present. I want to add to my proof, if I may, because I want to give some evidence upon a subject that I think is wider than what may be called the matters of procedure I have been dealing with up to the present time.

17,191. I think I have finished your proof?—Yes. I would like to make a few suggestions upon the wider subject of the prevention of divorce, if it is possible. It seems to me that the first thing you have to do is as far as possible to discover the causes of infidelity. The causes of infidelity are, in my opinion, in nine cases out of ten, unhappy homes. People who live miserable lives at home, as long as they are human, are apt to seek sympathy and affection elsewhere, and the moment as the result of that they form an alliance which they cannot make a legitimate one, they become in my view a danger to the community. My opinion is that it is more in the interests of public morality to dissolve a marriage before infidelity has arisen than after. I quite appreciate the Church view, and I treat it, if I may say so, with the deepest respect, that you should not have divorce at all, that it is contrary to the Christian religion to have divorce at all.

17,192. Is that quite accurate?—Perhaps when I say "the Church view" I put it too widely—the view of some, particularly some who have given it before this Commission.

17,193. The accepted position, as we have it in England, is one cause?—Yes. I was going to say I tender my evidence upon the assumption that the State recognises that some form of divorce is necessary for the public good. Let me approach what I suggest are the causes of unhappy lives which should lead to extended rights of divorce. First of all, I think permanent insanity should certainly give a right of divorce. I can imagine no greater danger to the morality of the community than a young man with a permanently insane wife. He is almost sure to form alliances elsewhere which he never is able to make legitimate ones. It is perhaps one of the evils of the day that such alliances are sometimes obvious, and I fear sometimes recognised, and, if not adopted, scarcely condemned by society at large.

17,194. You said "permanent insanity"?—Incurable insanity.

17,195. What sort of check or test of that would you suggest should be adopted?—Only the medical test. You can get no other.

17,196. By competent people that it is incurable?—Yes.

17,197. You do not propose to go as far as the suggestion that those cases should be dealt with in which there is recurrent insanity, sometimes coming out well, and sometimes going back again?—No.

17,198. It has been suggested that is the class of case which more affects the question of heredity than any other?—If I may say so, I was coming to that. I shall venture to deal with that under the question of inter-marriages between persons with hereditary complaints.

17,199. I do not want to interrupt you more than necessary, because everything you say is very important?—I was dealing only with the question of what increased facilities—if that is the right word—for divorce I would give, and I would recognise in the future permanent insanity, as giving the court a discretion to dissolve the marriage of the parties. I take my standard upon public morality. I say to do the contrary is not good for the State.

17,200. Would you apply that even where the parties had had the misfortune, after a long term of marriage, and were getting old, or limit it to a period of life?—I should find it logically difficult to differentiate at what age you would say a man is getting old, or a woman; it would be difficult to draw the line.

17,201. With women there is a particular reason for a limit?—I agree. My reason is less strong in a man or woman of advanced age than when young, but I should see so much difficulty in drawing the line that I think one rule should obtain, and the test should be the permanency of insanity, at whatever age it occurs. I am sorry I did not add that to my proof; I did not know whether I should do so or not. Another evil in married life I should recognise as a cause for divorce is permanent drunkenness between the spouses.

17,202. Permanent?—Incurable—"permanent" is the wrong word. In my opinion, you are met by the

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difficulty of definition, but, I think, that is got over by competent medical opinion. It is not very difficult to determine when a person is a permanent drunkard or not.

17,203. It is not incurable if the person is absolutely restrained from drink, so that the word "incurable" is hardly apt?—I think so. What I mean is this: if the drunkenness is such that, in the opinion of competent medical men, it has become a disease, which by medical means is beyond the hope of cure.

17,204. So that, if freed from restraint, it would always come into operation again?—Yes. That would involve trial of restraint having been made before the divorce is granted. I would always leave the judge a discretion in these cases, and I expect he would satisfy himself it was incurable. The first question he would ask would be, "Has a cure been attempted? has isolation been tried? have the ordinary medical methods been exhausted?" and it is only when he is satisfied they have, that he would exercise his discretion in favour of the applicant. But I can imagine nothing that more leads to infidelity than a drunken spouse, and the frightful unhappiness that results from it, and the want of sympathy and comfort at home which drives either the man or the woman to form alliances elsewhere.

17,205. Have you experience of such cases?—I have some. Then I would go a little further, and give the court a discretion to dissolve marriages—a discretion to be sparingly exercised—in cases where there is on the side of one of the parties—it would generally be the husband—what I may call permanent cruelty, short of legal cruelty, such things as habitual neglect, where you in fact have got two parties who, although nominally living together, possibly under the same roof, are in fact living separate lives and are consequently in nine cases out of ten making alliances elsewhere which I suggest are a danger to the community. But in all these cases—I would throw it out merely as a suggestion: I have thought it over and it may commend itself to you or not—I would make a decree nisi in the first case, and would make it absolute only in 12 months, and I would make it necessary for the parties who had obtained the divorce to return to the court at the expiration of the 12 months and satisfy the court, by lesser evidence than on the first application, that the state of things still existed, because I should hope that when a decree nisi was made—of course not in cases of insanity, but in cases of what I call non-legal cruelty, habitual neglect or drunkenness—that the very making of the decree might in some cases cure the evil. The parties, who might really have an affection for each other in their hearts which had become obscured by their practices, might, when they found the court had really considered their case and made a decree, during the intervening 12 months make up their differences and cure themselves, and the court might never hear any more about it. It follows that, in my opinion, all these applications should be heard in camera, because they might never result in a decree; but I am strongly of opinion that when a decree of that kind had been made and confirmed at the expiration of 12 months, it is for the good of the community that the parties should be released from a tie which has become nothing but a tie in name, and should be free to contract legitimate alliances elsewhere, and not, as they do at present, illegitimate alliances which probably very often breed illegitimate children and constitute a danger to the State.

17,206. I rather gathered from you that you excluded legal cruelty, but that is a greater cause?—No, I do not exclude it; I was extending it, not seeking to touch the present grounds.

17,207. I thought you were excluding that?—I am obliged to you for pointing that out.

17,208. In cases of lunacy where the persons themselves cannot take the necessary steps, they would have to be dealt with in the presence of a relative or a guardian, and he would look after them. Would you think it desirable, in that particular case, that every application should be made on notice to the King's

Proctor, so that he could inquire?—I should see no harm in that; but every lunatic has a guardian appointed.

17,209. They may be without adequate assistance. That would be an additional check. We had a suggestion yesterday of an Act of Parliament in one of the American States, at the instigation of a wealthy man possibly, which was thought to have been abused, and the Act was repealed, but abuse might be checked if the public official was always made a party to that particular form of proceeding?—I agree. I think it would be an additional safeguard. I confess it had not occurred to me.

17,210. Then you have some other point to lay before us, I think?—The last point with which I venture to trouble the Commission is this: I formed a very strong opinion to the effect that there are certain marriages which should be absolutely forbidden by the State.

17,211. Have you thought about the desertion cases in dealing with the causes? You have mentioned three causes; a fourth which has been put before us is malicious desertion. You have not touched on that?—Malicious desertion is *a fortiori* stronger than what I may call the constructive cruelty I have dealt with. In the eye of the law desertion amounts to cruelty, and therefore I include it, and it is a stronger case.

17,212. Now we come to your last point?—I feel very strongly that there are certain marriages which should be forbidden altogether. I am not sure this is cogent to the subject, but, with your leave, I should like to add a few words on it. I am strongly of opinion in the interests of the State, and the health of the State, and the health of the young of the State, marriages should be absolutely forbidden between parties having a hereditary complaint. I am sorry I have not collected all the statistics for the Commission, but if they are considered of interest I could do so. I know what sources to go to as to the lamentable results that accrue from marriages between people with recognised hereditary taint, for instance, people who have insanity in their family; people who have tuberculosis in their family. Marriages of that kind result in 99 cases out of 100 in either deformed or mentally deficient children, and those children themselves in turn come to marry. They are mentally deficient, and just the class of people you find wandering away from the marriage tie; and from the point of view of the public health and the stamina and strength of the nation I think marriages of that kind should be forbidden. I would do it in this way, the way I believe it is done in some of the States of America. I would make every person, man and woman, before they are married, make a declaration as to whether or not there was in their family one of the half-a-dozen scheduled complaints which a commission of doctors could easily define as being those which result in deformed or maimed offspring, and if, in face of declarations and the consequent absence of the certificate—the clean bill of health which I would make a necessity of marriage,—they chose to get married, I would make it an offence. I am aware it will be said if you get two young people who are in love with each other and want to be married, but who are forbidden because their fathers had some hereditary taint for which they are not responsible, the only result will be that they will proceed without marriage. It is an evil which you have to face. Unluckily that sort of thing exists at present to a very large extent, and I do not believe that it will be appreciably increased. If there is an increase I think it would be slight, and to my mind it is much the lesser of the two evils. At any rate you would not be recognising and legitimising an alliance which can only, from the point of view of the State, have the most disastrous effects. I hope you think it comes within the purview of this Commission.

17,213. You bring it into the purview by indicating that many cases of divorce arise from that cause?—I think so. I think mentally deficient people are wanting in moral stability, and wanting in—to use a common phrase—backbone, and are more liable to be a prey to temptation and less capable of meeting the difficulties of life, and doing what has been called

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[Continued.]

meeting people half way, than others are, and therefore I think they constitute a danger.

17,214. Does that finish the points you wish to mention?—Yes.

17,215. (*Mr. Burt.*) With regard to publicity, I understand you to say that, except by conferring discretion on the judge, you would leave it very much as it is?—I would.

17,216. You lay great stress upon publicity acting as a deterrent to misconduct?—That is the only reason for which I would leave the existing condition of things.

17,217. You did also mention, but I think you emphasized it less, the evils that arise so far as corrupting the young is concerned?—Yes.

17,218. You do fully recognise that that is a very serious evil?—I recognise that the publication of improper details must have a bad effect upon the young. I would seek to meet that by giving the judge power at the trial to suppress anything which he thought would have that effect.

17,219. Do you think that would be sufficient?—I think it is not a counsel of perfection; I think it is the lesser of the two evils.

17,220. With regard to giving jurisdiction to county courts, I suppose that is based upon what a good many witnesses have urged before us, the practical impossibility of the poorer class of people having access to the Divorce Court?—Yes.

17,221. You would confer that, however, on only some of the county courts?—I think it would be possible to group the county court circuits, but His Honour Judge Tindal Atkinson would know more than I do about that. I should have thought it would have been possible to group the county court circuits so as to avoid giving jurisdiction to all the county court judges.

17,222. That would mitigate the evil so far as distance is concerned, and travelling expenses of witnesses and others, which is no doubt a very important factor?—Yes. If you allow divorce at all it should be common to all. At present it is not. A case was given me by one of my own constituents a little time ago, a man who told me he was married, and the very next day his wife left him and had been living with some other man ever since, by whom she had a family. He asked me how much a divorce would cost. I said I was afraid something between 30*l.* and 40*l.*—I hope I was accurate—and he said he had saved 10*l.*, but could not get any further. Incidentally I may add he also informed me he was well aware that the reform he was advocating had been several times passed by the House of Commons and thrown out by the House of Lords, an impression I was unable to remove from his mind. That really has nothing to do with it.

17,223. Your notion would be to have the county courts grouped?—Yes.

17,224. How would that be done? Have you any scheme or suggestion on that point?—I should have thought it would not have been a very difficult thing to do. Some convenient town could be taken as a centre for either two or three county court circuits, perhaps two convenient towns, and the county court judges, I think, could well be left to make that grouping themselves, and determine among themselves which of the judges should exercise a jurisdiction.

17,225. It has been put to us as an objection to the giving of jurisdiction to the county courts that that would lead to diversity of decision on the part of the courts. Do you think there is anything in that objection?—I think at present, just at starting, you would get cases perhaps, occasionally, where the learned county court judges would differently interpret the rules of procedure, but I think they would rapidly disappear, and I think the county court judges, who are a very able body of men, might be trusted, as part of the new jurisdiction, to learn the procedure and the law which they had to administer.

17,226. It has been put to us also that it would be better to leave it to judges or courts of wide experience?—There is none but the Divorce Court in London, which would be the ideal tribunal if you could only get the witnesses.

17,227. Would there be any necessity in London for any change, giving the county courts jurisdiction?—No, I should say none.

17,228. That would apply to the country?—Yes.

17,229. (*The Earl of Derby.*) We have had put before us many undoubted cases where divorce could be obtained, but the people have not been able to obtain it because of expense. I understand your recommendation with regard to the county court, but you say all the first proceedings, as I understood you, should be taken in the High Court Registry in London?—I do, because they do not necessitate the attendance of the parties.

17,230. Even that would entail more expense than if it was done in the county court registry, would it not?—I do not see why.

17,231. Does it not mean the employment, first of all, of a solicitor in London, as a general rule?—A solicitor in the country has an agent in London, and the charge to the client is the same whether done by the country solicitor or his London agent. It means the profit they make is smaller because they divide it. There is a scale of fees.

17,232. (*Chairman.*) It absolutely necessitates the employment of a solicitor, whereas a man can present his own petition and not employ one at all?—I can see a great deal of difficulty in divorce cases in leaving the man to litigate without the aid of a solicitor.

17,233. (*The Earl of Derby.*) We have had cases where there is a poor man's lawyer?—If you had some permanent official to advise the litigant it might be possible.

17,234. In many big towns there are poor men's lawyers, such as Liverpool, Manchester and Leeds?—Not as a public institution.

17,235. With the help of that poor man's lawyer, the applicant, man or woman, would be able to do the work in the local registry office, instead of coming to London?—Then, of course, you are at once doing what I rather understood was not to be done, spending public moneys to help a particular class of litigant. You are making a new departure in that; you are providing a public official to help those who want divorce; but there is no help for those who want to bring an action of negligence.

17,236. There are already local registry offices and officials provided?—They do not advise.

17,237. A poor man's lawyer, you advise?—I understand you to say he is to be a public official.

17,238. Not at all. My point is that the poor man's lawyer exists in a great many big towns. An applicant would be able to go to him and, acting under his advice, would be able in the local registry to secure what you wish them to come up to London to secure, which they cannot secure in London except through a solicitor?—May I point out what seems to me to be the answer? First of all, the poor man's lawyer is not universal; he may exist by public enterprise and public charity in a few places, but on the face of it, if you are to have a new system, it must be universal, and if you are to establish the poor man's lawyer as a public institution it must be at the public expense. Then you are making a new departure and giving public help to one class of litigants that you refuse to others. It may be desirable, but it is a difficulty I foresee. As to the court procedure, do not let it be understood I suggest that the parties should have to come to London in those cases. I agree you must have either somebody to give advice at the public expense, or a man must employ a lawyer.

17,239. I think it has been rather the other way. If you have it in the local court registry, it would mean, at all events in some cases, if not in all, it would not be necessary for a man to employ a solicitor. If you have it in the High Court Registry in London, it is essential that the solicitor should be employed. That is my point?—I quite see it.

17,240. That would be so?—It would, and I do not think it would be a matter of much difficulty to give to the probate registries a divorce jurisdiction.

17,241. I want to ask you a question on a legal point. You wish permanent lunacy to be a ground for divorce?—Yes.

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17,242. I will take the case of a woman being shut up for temporary lunacy. In a case like that the woman is under restraint, but there is the possibility that somebody might take advantage of her, and she may have a child?—Whilst she is under restraint?

17,243. It has occurred?—I think they must be very exceptional cases, because women under restraint are nowadays in institutions which are under the public sanction, and are examined.

17,244. I was perhaps thinking of better class people who are able to put them into some private home?—Even private homes have to be licensed, and subject to constant inspection by the Lord Chancellor's officials.

17,245. They are?—There is no such thing in this country as a private home, that is allowed to have lunatics, except under direct licence from the State, and subject to inspection.

17,246. I mean under restraint in this way, that she has got a private keeper who looks, or is supposed to look after her and paid by the husband. It would be possible under those circumstances for a man to take advantage of her?—Yes.

17,247. You say it is not likely?—I have not heard of such a case in my experience. The world is so large, I have no doubt cases occur occasionally, but I think they are very rare.

17,248. In any case, where a woman is undoubtedly under some restraint, if she has a child she is not supposed to be responsible for her actions, is she?—I should suppose not.

17,249. Therefore the husband would have no redress?—I have never known such a case occur. I suppose, as the law stands, if a lunatic woman had a child it would be adultery, but Lord Gorell will know about that better than I.

17,250. (*Chairman.*) There is a case on the subject: it is a very difficult question?—I have had no such case in my experience or in my reading.

(*Chairman.*) Perhaps I could find it. Mr. Justice Butt when President had a case of that kind before him. I cannot at the moment recall the name.

17,251. (*Lady Frances Balfour.*) Would you make the law equal as between men and women in the case of adultery?—In the case of habitual adultery I would. I can see no reason why the remedy should not be the same, if the man was living in constant adultery, as if the woman were doing so.

17,252. You make a distinction between the one act on the part of the woman and on the part of the man?—I have not thought that out.

17,253. (*Judge Tindal Atkinson.*) With regard to county courts, may I ask your reason for thinking it is advisable to limit the jurisdiction to certain of the judges instead of giving it to all the judges?—Because I should have thought there was not sufficient divorce work that would go to them at the present time to make it desirable to give it to every county court judge. Secondly, the procedure is somewhat peculiar, and the law is a little tricky, if I may use the word, upon the subject, and I think it is desirable as far as possible that the jurisdiction should be exercised by a person who is constantly exercising it.

17,254. Perhaps also it is well to avoid diversity of judgment and diversity of treatment?—Undoubtedly.

17,255. As to the registries, would there not be this advantage in having the local registries as the registries to which the people could resort, namely, that if any interlocutory application or order were required, the registrar would be readily accessible, instead of their having to employ a solicitor in the country and then employ an agent in London, which would increase the expense, such as the question with reference to the custody of children, and so on?—Except in the very rare cases in which the parties have to appear before the registrar, it does not seem to me it would increase the expense.

17,256. There would be the employment of two solicitors in the case very often, employment of a country solicitor, and a London solicitor?—I would have only one scale of charges applicable to the case.

It would be immaterial to the petitioner whether the work had been done by one or 20.

17,257. You would control the difficulty by scales of costs?—Scales of costs. May I add this? If you are going to give an entirely new jurisdiction to persons who have not hitherto exercised it, I think you should begin slowly; I would not give it to more than I could help at first, but give it to certain county court judges. I would not give it to country registrars if I could help it, to start with. I have no doubt they are very able men, but they are not perhaps sometimes recruited from the same class as the county court judges; they have not the same training, and might find it difficult to acquire the procedure which, particularly in chambers in the Divorce Division, is somewhat difficult to learn.

17,258. I suppose you attach great importance to cases coming on on fixed days, so that there should be no waiting?—Certainly.

17,259. I should like to call attention to a case I have had before me. May I ask whether in your experience such a thing could frequently happen in the present state of things in the London court? This is the counsel who is engaged in the case who writes to me: "About 20 years or more ago I was in a case for a petitioner, a Yorkshire working man. This man had undoubted cause for divorce, flagrant adultery, repeated in an open and defiant manner. There were children, one or more of whom the wife had taken away and refused to give up. The man saved a few pounds, and some of his friends gave him such assistance as they could. The case was in the list for hearing on a Wednesday, but the case before it proved to be a long one, and my case remained unheard on Thursday and Friday. Saturday was a summons day. The man's money was exhausted, he and his witnesses could not remain in London, and the result was the case was struck out?"

(*Chairman.*) Was that an undefended case?

(*Judge Tindal Atkinson.*) An undefended case.

(*Chairman.*) Before you put that question to Mr. Hume Williams, to meet that very difficulty all undefended cases were, at my suggestion to the former President, Sir Francis Jeune, taken on the one day, a Tuesday, and the whole of that difficulty which arose through cases that were long was got rid of. I do not say in no instance it did not follow on the next day, but that system was introduced, and the suggestion was they should be taken on the first few days of the sittings and taken continuously, until they were all practically exhausted. I do not think that grievance can exist now.

17,259a. (*Judge Tindal Atkinson.*) I wanted to know whether that is your experience?—It has been my experience in the Divorce Division as in all divisions of the court. Occasionally the condition of things is such that a case cannot be reached, and the parties have to return to the country. Sometimes you have a case in the list the day before the end of term; it is impossible to tell whether the cases which precede it will be short or long; if they are long, then the case in which you are interested cannot be taken, and the parties have to return to the country.

17,260. (*Chairman.*) That is in the defended cases?—Yes.

(*Judge Tindal Atkinson.*) I understand from the Chairman that cannot now happen.

17,261. (*Chairman.*) The grievance cannot happen if what we adopted is followed to any extent in the undefended cases. They are all disposed of in the day?—I have not known such a case happen in the case of an undefended cause. I have known everything in the list to be tried that day or the next, or at any rate before the parties returned to the country.

17,262. (*Judge Tindal Atkinson.*) It has been said, and we shall agree, if you can bring the poorer classes within the reach of the court in London, and their cases tried by the London judges, it would be better than anything. It has been suggested it could be done by the State paying the costs of the petitioner and the costs of the petitioner's witnesses in coming to London, and the State forego all fees?—You mean the

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State making no profit out of it, paying the bare expenses?

(*Judge Tindal Atkinson.*) Paying the bare expenses of the witnesses. It is not suggested that the State should pay the expenses of the witnesses of the respondent.

(*Chairman.*) That has been suggested, too.

(*Judge Tindal Atkinson.*) Has it?

(*Chairman.*) You cannot have one without the other.

17,263. (*Judge Tindal Atkinson.*) Supposing that happened, that the petitioner's witnesses were paid for coming to the court, and all the respondent's witnesses were paid, then it is suggested that the solicitors might be found who would be willing to make no charge, and counsel might be found to conduct the cases without any charge, if that state of things could be brought about, do you think that the High Court in London could exercise the jurisdiction all over the country satisfactorily in the interests of the poorer classes?—Do you mean whether the High Court in London would have the time to consider the large number of cases that would consequently come to it?

17,264. I was rather speaking with reference to whether the parties would, under those circumstances, be able to reach the London courts and have their cases disposed of in London?—Obviously they would be able to reach the courts if their expenses were paid, and once they got to the London courts their cases could be disposed of. But may I point out you are entering at once into the difficulty which I ventured to suggest to his Lordship when he put the question a little time ago, that you are devoting for the first time public funds in aid of a particular class of litigants, and whether Parliament would tolerate that it is not for me to say.

17,265. In your experience do you think you would be able to obtain solicitors in the country for no charge, to get up the case for the petitioner, to see the witnesses, take their proofs, prepare the briefs, copy them, send them to London agents for delivery to counsel, and arrange for the transfer of witnesses to London? Do you think it likely that solicitors would undertake to do work of that kind for nothing?—I should doubt whether you would get competent advice for nothing.

17,266. (*Mr. Brierley.*) With regard to the publication of reports of divorce cases in newspapers, I understand you are in favour of the present system being continued, subject to certain discretionary powers in the judge to forbid the publication of certain portions of the evidence?—Which are obviously prurient matter.

17,267. Another suggestion has been made to the Commission; I should like to know what you think about it. It has been suggested that the names of the parties should be published, and also that the evidence should not be allowed to be published, but that the judgment of the judge should be. It has been pointed out that, while avoiding the evils of the publication of prurient details, it might have the advantages of enabling the friends of the parties and the general public to place the blame upon the right shoulders, and also to enable the persons whose names have been connected with divorce cases, who are innocent, to have their reputations cleared. What do you think of that suggestion? Do you think it a practical one?—I do not think so. You were not here when I gave that part of my evidence. May I venture to repeat it? The mere publishing, as is suggested, of the names of those who have been parties to a divorce case, and the result, without giving the facts—

17,268. I did not mean only the result; I meant the judgment of the judge. I understand, except in the undefended cases, the judge would probably, or at any rate if he knew that his judgment was the only part of the case to be published, think it his duty in giving judgment to exonerate certain persons whose names had become connected with the divorce case?—I think it should go further than that.

17,269. I understand you to be in favour of maintaining the present system, but it has difficulties?—I agree. I was giving my reasons. I ventured to say I think nowadays the world of society is apt to differen-

tiate according to the facts of the case. There may be cases in which the conduct of the respondent and co-respondent has been such—and the conduct is only to be gathered from the facts of the case—that they should naturally be excluded from every decent society. There may be, on the other hand, cases in which the respondent, owing to an unhappy home or bad treatment from her husband, merits pity and commiseration more than anything else. I think the public differentiate and determine according to the facts of the case whether the parties shall be admitted into society in the future, which means a great deal to the parties in a certain class of life. It means either total exclusion from social life, or else inclusion upon something like the terms that obtained before they had the divorce. I think it would be a cruel thing to limit the report of the case to the bare facts, the result, and possibly the judgment of the judge.

17,270. (*Judge Tindal Atkinson.*) I omitted to ask you one question which I feel of importance about the county court judge. Supposing the jurisdiction is given to county courts, do you think that the parties should be entitled to a jury if they wish, or do you think it would be in the interest of the community that the judge alone should try the cases?—I do not see how, when you are judging a pure question of fact, you could exclude the rights of the parties to have a jury, as long as the jury system obtains in the country. It is often the purest issue of fact, a most elementary question of fact, and why should the parties be able to determine a question of fact with a jury in an action of negligence and not in a divorce case?

17,271. Do you think the doctrine of recrimination should be abolished?—I have not thought of that. You put it rather suddenly to me.

(*Chairman.*) If you have not thought of it, it is not worth while dealing with that point.

17,272. (*Sir Lewis Dibdin.*) I gather from the answers you gave to Mr. Brierley, that in your views as to the necessity of maintaining publication of divorce reports you are thinking largely of the better classes in society. You spoke of people being admitted or not admitted to society afterwards?—In that part of my evidence I have given other reasons.

17,273. Have you had brought under your notice personally the very widespread corruption of young people that takes place in consequence of these reports?—I have heard evidence to that effect, and I accept it. I have never known of any concrete case myself where immorality has been traced to the reading of reports of divorce cases.

17,274. Possibly your work may not bring you very much in contact with the class where you would get such evidence?—What class would you mean?

17,275. I suggest possibly your personal work would not bring you very much in contact with the very poor?—I meet the poor in many phases of life.

17,276. You will not understand me as making any suggestion one way or the other. You will take it from me we have had a great deal of evidence here as to that?—I accept that.

17,277. Evidence of a very impressive character of the practical corruption which the publication of these reports, principally in Sunday papers, causes among the young of the poorer classes?—I admit the evil. I look upon it as the lesser of the two evils.

17,278. It is a question of degree, is it not?—Yes.

17,279. In your view, the harm that might occur to persons you are thinking of who move more or less in what is called society, would be so grave as to outweigh the evil done by these reports to other classes?—You are putting it rather higher than I did. I did suggest that a discretion should be given to the judge, to be exercised, and freely exercised, during the trial of the case, that when details are of necessity gone into which are harmful, in his opinion, for publication, he should have the power to stop it.

17,280. That is your suggested remedy?—That is the only remedy that occurs to me.

17,281. Do you think, with your very great experience, that it is a practical way of meeting the

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difficulty, for a judge during a trial to have in his mind not only the evidence and the bearing that evidence has on the issue, but always have one eye on whether or not it ought to be in the papers? Do you think that is a practical thing?—I do not think it would be difficult at all.

17,282. (*Chairman.*) With regard to this question of publicity, has it occurred to you that the publication practically affects the whole nation? Your deterrent point only affects a few cases where the parties might possibly be deterred from committing a guilty action?—I do not accept the phrase "the whole nation." In my view it only affects those whose minds might be affected by reading such material, which is a small proportion.

17,283. Supposing you were acting as the judge applying this matter of discretion, how would you treat a sensational case that lasted a fortnight or so? There are a few cases of that character?—I have recently emerged from one.

17,284. How would you suggest that the judge should exercise his discretion in such a case as that, where the details of it were not indecent, but, to use a word which we have had put before us on some occasions, "spicy"—nothing indecent or improper in one sense, but very attractive reading of a spicy character—running on for a fortnight. If you had to sit as judge in that capacity would you apply that discretion?—I do not believe the spicy details, to adopt the word your Lordship puts—

17,285. It is not my word?—It has been used before the Commission.

17,286. I repudiate it myself; it has been used here. I do not want to put any words at all?—I do not think spicy details of that kind are more harmful than half of the alleged spicy things that appear in some half-penny illustrated newspapers which circulate without let or hindrance. They may be vulgar, probably they are, at least you and I would think so, but they appeal to a large class of the community and apparently amuse them. The test should be whether it is harmful to morality.

17,287. Possibly you are right. I asked you how you would suggest the judge should exercise his discretion in a case of that kind?—Supposing I were trying the case, the moment the details became of the nature, "Did you enter the room?" "What did you do?" "Was the door locked?" I should say that is detail of the case that should not be published. I should rely largely upon the counsel practising before me to tell me when they were going to call a witness whose evidence as a whole would be objectionable. It would soon become the practice of the court for counsel whom the judge trusts to tell him what details of the case he thought should not be published. I agree it is not a perfect system, but it is the best I could suggest.

17,288. It seems to impose a very difficult task on the judge. I must thank you very much on behalf of the Commission for the trouble you have taken in giving your evidence?—I am very much obliged to you.

Mr. HENRY REGINALD WANSBROUGH called and examined.

17,289. (*Chairman.*) You are the senior partner in the firm of Wansbrough, Robinson, Tayler and Taylor, solicitors, of Lion Chambers, Broad Street, Bristol?—That is so.

17,290. You also have branch offices in Devizes and Melksham, Wilts?—Yes.

17,291. Do you attend here on behalf of the Bristol Incorporated Law Society?—I do.

17,292. Is your evidence that which meets with approval in the society, or is it your individual evidence?—Certainly, by the majority.

17,293. You have been in practice since 1882, and are a Past President of the Bristol Incorporated Law Society, of the council of which you are still a member?—I am.

17,294. Have you had in your practice considerable experience in the conduct of suits in the Divorce Division of the High Court?—I have.

17,295. And also a large advocacy practice in the county courts and police courts of Bristol and district, and have had many hundreds of cases under the provisions of the Summary Jurisdiction (Married Women) Act, 1895?—Yes.

17,296. What is your view as to the giving of facilities for local trial in divorce cases?—In the first place I am of opinion that there should be absolute equality between the sexes.

17,297. I will come to those points later on. We will deal first of all with the tribunal?—I am of opinion that jurisdiction should be given to local county courts, and I agree I think it would be better if the county courts were grouped into districts, as we find it now often in bankruptcy matters. I think there would be more regularity of practice if there were fewer judges taking the divorce cases.

17,298. Might I put a concrete case. At Bristol the whole of the neighbouring district might centre itself in Bristol?—I think so. Perhaps our county court judge could well take the district, say, from Chippenham to Taunton, and he should have power, and it should be his duty to sit in the courts of the district where the majority of the witnesses came from, in order to save the expense of the witnesses coming to Bristol.

17,299. "Grouping" with you means one judge taking a largish district, but empowered to sit in any district he chose?—Certainly.

17,300. Does it also involve the idea that the proceedings might be conducted in any one of the county courts in the district, but heard at the place he selected?—Undoubtedly.

17,301. We have had figures about cost in London. Is it your view that the present practice makes it impossible to get to the court in London?—I am quite convinced of that. I have had many cases where it has been absolutely impossible for people to obtain justice because of the prohibitive expense.

17,302. Do you see, as a practising solicitor with this experience, any means by which the present system could be modified to meet that difficulty without local jurisdiction?—I see none, for this reason: the chief expense is the coming to London, and bringing the witnesses to London, and keeping them in London.

17,303. Are the solicitors' charges greater if a case is started in a country solicitor's office, and done through the agent in London, than if it is a London case, and is started in the London office and continued in the London office?—The expense is greater.

17,304. The agency expenses?—Yes, not materially. That comes to a matter of degree with poor people.

17,305. Is it the correspondence that does it?—Yes. We have to interview the clients, we then have to communicate with our agents and give them instructions. They have to attend the courts, and they have to write to us informing us what has been done, and then we may have to see our clients again in the matter; whereas if we can do it all ourselves, between ourselves and our clients in the district, that additional expense is saved.

17,306. We are told, and you seem to agree with it, that an undefended case varies, you say, from 35*l.* to 60*l.* Mr. Musgrave told us about the same figures, perhaps a little more. Suppose you had in Bristol a local court sitting even on the basis such as you suggested, a special judge taking it, have you any idea what you think the cost would be in comparison with the figures I have mentioned?—It would depend in the first place upon whether counsel was instructed. If counsel were not instructed the cost would be materially less. Then, again, it would depend upon what the fees were in the county court. The fees in the divorce court are not high now; they are singularly small; indeed in a defended case the fees are about 5*l.* 10*s.*

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to 6*l*. They may be materially increased by interlocutory applications, but in an ordinary defended case I think, to be exact, 5*l*. 17*s*. 6*d*. covers all the court fees. I have no doubt that, in the county court, an applicant for divorce, the petitioner, ought to be able to get his divorce for, say, from 7*l*. to 10*l*.

17,307. You think if a local tribunal were established the cost ought to be about what you have just told us?—Yes.

17,308. If it is contested, you get into a different state of things?—Yes, but of course it does increase the cost, not necessarily very greatly, in the county court. There, of course, is the case where the petitioner himself might proceed by himself, as he does under the Workmen's Compensation Act, and the procedure in divorce in my experience is really very simple. There would be simply a petition alleging when the people were married, how many children there were, where they lived and cohabited, and then alleging where and with whom the acts of adultery took place. A skeleton printed form of petition in the county court, as we find in the Workmen's Compensation cases, could be filled up by the ordinary petitioner.

17,309. Do you think from your experience if you had a local court in Bristol the average intelligent working man could really conduct his own case?—I think a great many would, as they do in separation cases now.

17,310. They do that?—Yes. Of course it would not be confined to the working man, necessarily.

17,311. I was putting him down as a possibly less clerically able man than a man above his station. I agree it would be open to men of education and intelligence?—Yes, small tradesmen and poor professional men, clerks in banks and insurance offices.

17,312. You might anticipate they could do that themselves?—Undoubtedly.

17,313. What have you found has been the result of the inability of people to get the relief they would desire?—Undoubtedly they are inclined to live immorally.

17,314. You say here the result is that if the parties separate through the misconduct of either, the man usually goes to live with another woman, and the wife with another man. Neither of these parties are able to marry again, or if they do, they commit the offence of bigamy, for which they are sent to prison, and the result is that being deprived, by reason of the expense of that remedy which is obtainable by the monied classes, a great deal of immorality arises, and many illegitimate children are born and brought up in an atmosphere of immorality. That is a general statement. To what extent are you able to specify that in particular?—I have known scores of cases where people who would otherwise have got a divorce if they could, have gone, the man to live with another woman, and the woman to live with another man.

17,315. Do you think in your district there is any demand for some relief of this kind?—I believe that the demand is greater amongst the lower middle class than even amongst the poor. Personally, I do not think that immorality amongst the poor, the very poor, is as great as it is amongst the educated class.

17,316. I think you refer later on to the difficulties in the way of coming to London. I think we appreciate those pretty well, and I do not think we need elaborate those, but you have one case which illustrates your point, a case of a railway guard. Perhaps we might have that?—The facts were these. I was acting for the petitioner, who was a railway guard, and had been in the employ of the railway company for 35 years; he had 5 children, all girls. It transpired although this was late in life, because he was over 60, his wife while he was away running from Bristol to Penzance, brought men to the house, and immorality took place. It was a terrible thing for the girls, of course. She was also in the habit of visiting a man who was a bookbinder and had some little property of his own. He was made ultimately the co-respondent in the case. There were others, but we could not find their names, because apparently this immorality was quite promiscuous. Proceedings were instituted and

case was not heard until 28th January 1909. The chief reasons for that were that every obstacle was thrown in the way of the petitioner by the respondent and co-respondent. The co-respondent had a house which he sold for 280*l*., and he provided the respondent they commenced upon the 29th November 1907. The with money. She went to one firm of solicitors and he went to another; they made applications for further and better particulars, an application for alimony, and numerous applications were made; indeed, every obstacle was thrown in the petitioner's way. That was chiefly the reason of the delay. There was some little delay through his being in a difficulty in finding money as security. The financial effect upon the poor petitioner, who ultimately got his decree, was that he has been absolutely ruined. He had to pay 10*s*. a week to his wife as alimony; in all he paid 31*l*. He had to pay 34*l*. 10*s*. 6*d*., his wife's taxed costs up to trial, and he had to provide security to the extent of 90*l*. for her costs on trial, she alleging that she had witnesses, a doctor amongst others, from Penzance. That accounts for the comparatively large sum that was ordered. So that altogether he had to provide for the purpose of his wife, the offending party, 156*l*. 10*s*. 6*d*. He paid to my firm 80*l*. for costs, and I may tell the Commission that our London agents' and counsel's fees altogether amounted to 83*l*. 17*s*. 9*d*., so that we were 3*l*. 17*s*. 9*d*. to the bad.

17,317. We need not have the details too much. What were the days of trial? The bill of costs against the co-respondent works out at 227*l*. 12*s*. 8*d*.?—Yes. He is paying now at the rate of 1*l*. a month, so that it will take 20 years to pay it. We were 7 days in London altogether, 5 days' abortive journeys, and then the list was no longer proceeded with.

17,318. Is that a case in which there was a substantial defence, or one in which there was no defence?—Really no defence.

17,319. Was the security for the wife's costs obtained only on her application without an affidavit to say that she had a good case to defend?—It was simply a statement contained in the affidavit that she was not guilty of the offence.

17,320. Was that supported by the solicitor upon affidavit?—No.

17,321. I have made a suggestion, and I am sorry to see it is not acted upon, that where a woman wants security for costs she should fortify the application by proof that she had a proper case to defend; otherwise any undefended case may be met by an absolute stoppage, with all those costs incurred?—I think your Lordship's suggestion is most admirable. It is very difficult of application, of course, because the solicitor as we know has to be guided to a large extent by the evidence which is given to him.

17,322. I agree; all he is required to say is, "I have investigated this case and consider that is a defence," but that might be very far from right?—I think your suggestion is highly desirable.

17,323. Both the co-respondent and the petitioner are ruined?—Absolutely. The man is still paying back money he borrowed.

17,324. The next point to be dealt with is, assuming there were selected district courts, would you require any limit as to the liability or position of the petitioner?—I think in regard to that the Legislature ought to be very liberal, because in view of a case of this sort, it is not altogether unusual—perhaps it is a somewhat extravagant case, but by no means absolutely unusual—a defended case may well cost the petitioner 200*l*., and I do not think it would be at all fair or of any advantage to the majority of people if there was such a limit as has been suggested, for instance, a man earning 3*l*. a week.

17,325. You would say it should be wider?—Undoubtedly. There are so many cases of bank clerks and cashiers, curates and poor professional men and small tradesmen, who may be earning 3*l*. a week or 3*l*. 10*s*. a week, but who have to keep up an appearance which a working man has not to keep up.

17,326. Who would find it more difficult to get to London than a working man?—I do think so, indeed, and certainly more difficult to find the money. That

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has been my experience, that those are the people who are really the poorest. They have a position to maintain which they must maintain in order to keep their situation, and they have more difficulty in finding money than the apparently very poor.

17,327. Assuming it be thought desirable to place a limit on the exercise in the country of the jurisdiction, have you formed any notion of what limit should be placed?—I think if the petitioner made an affidavit that after all his just debts and liabilities were paid he was not worth 1,000*l.* he should be at liberty to litigate in the country.

17,328. A man may not be worth 1,000*l.* and yet enjoy a very large income?—Then a corresponding sum by way of income, but that certainly should not be less than 10*l.* a week.

17,329. You make a suggestion in your proof of trying the cases at the assizes. What do you say about that?—I think there may be an advantage amongst the people who are rather better off, that instead of going to London, and taking all their witnesses to London, their cases could be heard at the assizes.

17,330. That might meet all the cases?—No, because counsel only have audience at the assizes, and therefore it necessitates the preparation of brief, counsel's fees, and copy of evidence, and all the expenses attendant on it.

17,331. You say you think the present procedure in the Divorce Court is very good, and requires but little, if any, alteration, but the fees for setting down the case in the county court should be less than they are at present?—That is so.

17,332. With regard to separation orders, have you had considerable experience of them?—Before we go to separation orders, may I mention one matter with regard to divorce which I think is of considerable importance. In my judgment, petitions ought not to be filed within three months of the commission of the alleged offence or offences, because, in my experience, the parties, when they have had time to consider, very often are inclined to forgive one another and make the matter up: but if litigation has once been started and solicitors have been instructed on each side, it very often means war having been declared between the parties and the matter goes on, I think, therefore, a reasonable time, such as three months, should be given.

17,333. There is one practical difficulty, and I would like to hear what you have to say about it. I have known many cases in which the moment the discovery takes place the co-respondent or respondent disappears, or as soon as they get warning they run away to America or somewhere, France, Canada, or anywhere. Your view would present great difficulties in serving them?—A simple provision with regard to substituted service would surely suffice. That is done under the Affiliation Acts.

17,334. I wanted to see what you would suggest about that. Now the point with regard to separation orders?—With reference to separation orders I think the Act has worked wonderfully well. I have some figures here which are interesting as showing how women, who are practically the only applicants in these cases, have had the advantage of a separation order and yet have forgiven their husbands and have gone back and lived together in Bristol.

17,335. Are these summarised further on in your proof?—No.

17,336. I rather gather they are, if you will read the paragraph in your proof first?—Yes. In Bristol the number of women applying for orders for separation is about 700 per annum; the applications are very carefully examined and scrutinised by the justices' clerk, and the number of summonses issued is only about 200, and of these it would be correct to say that about 140 orders of separation are made each year, of these 140 approximately one third are rendered of no avail by the parties returning to cohabitation within a comparatively short time of the date of the order being made. Some orders are discharged by the court because of the adultery of the wife.

17,337. Do the statistics carry that any further?—Upon the assumption, which I think is correct, that 140 orders per annum have been made by the magistrates in Bristol during the 15 years the Act has been in existence, that represents something like 2,000 orders of separation. In Bristol in 95 per cent. of the cases the order is for the defendant to pay the money for maintenance into the court for the benefit of the wife. They have a special officer appointed to receive it. He keeps a list of all these orders, and it is interesting to know that on the first of the present month there were only 171 cases still upon the list; so that in the very large majority of cases the parties go back to live together. I have had a great number of cases where applications have been made for summonses, and before the return the parties have patched up their differences, and very often even in court. I think most solicitors try to see what they can do to get the parties to live together again if there is the smallest possibility, more particularly amongst young people.

17,338. If we have printed the papers you have there, will they show the details upon which the statement you have just read is based?—I can furnish them. These are figures given by Mr. T. Holmes Gore, our magistrates' clerk.

17,339. Would you like to put this in as a part of your evidence?—If you please. The statement is as follows:—

JANUARY 1910.—CITY AND COUNTY OF BRISTOL,
WITH ABOUT 380,000 INHABITANTS.

ESTIMATED particulars supplied to Honorary Secretary of BRISTOL INCORPORATED LAW SOCIETY as information in reference to the second and fourth subjects suggested "in preparing proofs" of evidence required by the ROYAL COMMISSION ON DIVORCE AND MATRIMONIAL CAUSES.

"2. The question of Separation Orders—their extent and effect and whether any and if so what amendments should be made in respect thereof."

"4. The question of amendments, if any, in the laws relating to Divorce and Matrimonial Causes and the procedure and practice therein."

At present applications for process for separation orders under the Summary Jurisdiction (Married Women) Act, 1895, is for the intending complainant to attend the court house personally, either accompanied by a solicitor or alone if not acting under legal advice—before the sitting of the court; and for the facts to be verbally stated to the clerk to the justices.

In about 19 cases out of 20 the complaining party is the wife, and she comes to receive advice and usually follows the advice given.

By the operation of the summary jurisdiction statutes a warrant to apprehend the defendant cannot be granted, as the proceedings are of a "civil" and not "criminal" nature. But if the complainant is a woman, and an aggravated assault has been committed on her, a warrant might be issued for an assault, on which if a conviction follows, a summons to ground a separation order may be made returnable immediately, and an order may be at once obtained by leave of the court then sitting.

The following statements and figures are, as far as can be ascertained by the justices' clerk and Bristol police, estimated as trustworthy and sufficiently accurate for the purpose required:—

(A) Number of applicants for summonses each week (for the last five years not less than 700 per annum) -	12
(B) Number of summonses granted and issued each week (making about 200 per annum) -	4
(C) Number of cases heard by the justices each week -	3
(D) Number of orders of separation made each week -	2.8
(The actual number in 1908 was 138; and in 1909 about 120. The number appear to be decreasing. On an average of five years about 140 per annum.)	

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- (E) Number of orders subsequently rendered void by the parties returning to cohabitation may be estimated to be about one third of the orders in each week. In 1909, 11 orders were discharged by the court, some for adultery of the wife - 1
- (F) Number on books of defendant husbands paying weekly sums for their wives, the complainants. Of this number 170 husbands pay or remit the amounts to the courts officer.
- (G) Number of payments actually made in various small sums from 3s. to 1l. per week in cash or postal orders - 5,754
(The amount paid to the court officer in 1908 was 2,274l., and in 1909, 2,417l.; the average would be about 2,300l.)

The jealousy or impetuosity or temper of some of the younger applicants is the cause of many abortive applications.

Many may have cause for jealousy but the statute gives no relief to them.

The older applicants have often borne with trouble for many years. The younger often come rashly and too speedily, and afterwards forgive the other party.

A court of summary jurisdiction in a large centre affords an almost daily opportunity of hearing matrimonial complaints, and they are usually determined within 10 days of the date of the proximate cause.

The greater number of applicants are wives, and on Monday it is not unusual for as many as 10 women to complain of their husbands and ask to be separated.

The summons' fees would not exceed 9s. 6d. per order on an average.

The summonses are served by the police, the fee for service being 1s., but if effected out of the city 2s. extra.

Generally speaking prepayment of the fees is excused.

The justices' clerks fees for all the work done does not amount to more than about 35l. per annum.

The orders are enforced by judgment summonses for which no fee is charged to the plaintiff as a rule; and in most cases they are efficacious.

In default of paying, the usual term of imprisonment is one calendar month.

Some obstinate men, who will neither work nor pay, have spent half their time in prison rather than support their wives and children pursuant to order.

As a general rule the wife has the custody of all the young children and of the girls, unless she is a drunken or dissolute woman.

17,340. Does that statement lead you to any conclusion as regards the desirability of making these orders temporary or not?—No, I see no necessity to make them temporary. I am rather of opinion that it would have exactly the opposite effect to that which is intended. If they were made temporary the probabilities are that both parties would hold aloof from one another to see who would give in first, and that would probably lead to ill-feeling between them, whereas now, experience shows that when the order is made it has the effect of being permanent unless the parties choose to come together, and the facts show that the parties do come together.

17,341. Do you think it worth while to give the magistrates power, notwithstanding it was a permanent order in form, to hear an application of either party to rescind it?—On the application of either party?

17,342. Say, after an interval?—I think anything that is reasonable, and that can have the effect of making the parties forget their differences, is desirable.

17,343. There might be a case where the parties did not meet and become reconciled, but the husband has mended his courses and might say, "You see I have shown you by proof that I am a fit person; do not let this order stand out against me." Do you think that might be desirable?—Yes; I think there are cases where the parties are jealous, and it arises more from jealousy than anything else, and all the circumstances are aggravated.

17,344. Would it meet with your views to make these orders run until the parties are reconciled or until the order is set aside by the judge?—Yes. At present the effect of a return to cohabitation is to put an end to the order.

17,345. I was meeting that by putting it expressly?—It could do no harm, and possibly may do good in some cases.

17,346. I fully appreciate the point of this enormous extent of return to cohabitation. What is the position of those who do not, in the outstanding orders that remain?—It is difficult to say; but I have known many cases where the men form undesirable connections with other women, and sometimes the women with other men, but not so often.

17,347. That is more so in the case of men?—Yes, for this reason, that there is no further punishment for him. There is for the woman, because if she is guilty of immorality, the order for maintenance would be put an end to: whereas with the man it does not increase his liability.

17,348. Would you give the magistrates power to exercise a discretion as to whether it should be put an end to in the case of the wife's immorality? At present there is no option?—I think there certainly should be an option.

17,349. Assuming that the order has led to immorality, would you leave the parties in the position that they could never get relief by divorce, or would you suggest any system by which that position might be turned into a divorce case?—I should not debar them the right if the judge thought fit in his discretion to give it to them. There are so many degrees of offences.

17,350. There is a suggestion at the end of the magistrates' clerk's statement about cases of adultery going to some other court than petty sessions. I do not know what that means?—So far as that is concerned I do not agree. I do think, so far as separation orders are concerned, the magistrates ought to have power to grant separation for adultery. They can do it for persistent cruelty or aggravated assault, or desertion, or failure to maintain, but there is no such power in the case of adultery.

17,351. Would you confer the same powers on the court for the relief of the husband as well as the wife?—Undoubtedly.

17,352. Exactly the same?—Undoubtedly; as is provided with regard to habitual drunkards.

17,353. How would you deal with the case of those parties who had been permanently separated and did not re-join, and there was nothing but the order for judicial separation, seeking to obtain a divorce?—I see no reason why they should not apply for a divorce.

17,354. And for that to the higher court, not to the magistrates?—Not to the magistrates—either to the county court or the divorce court.

17,355. Is there anything else on the question of separation orders, either in your proof or in the note which you have handed in which ought to be drawn to our attention?—I think not.

17,356. We may pass now to the question of the publication of reports. Does what you are going to say represent the views of your Bristol association?—I think all, but certainly the large majority.

17,357. Will you state it, please?—The opinion is that the publication of dirty matter, if I might use the expression, or suggestive matter, is most undesirable in the interests of the public. If young people read it they see that people in higher social position than themselves have been guilty of misconduct, and the details are such as are to be found published in the newspaper; it becomes common talk amongst them, and leads undoubtedly to immorality, and a less regard for proper behaviour.

17,358. You wind up by saying you think, however, the names of the parties and the result of the application should be reported?—I do.

17,359. I take it that would not form such interesting reading?—No, but I think that the judgment of the judge —

17,360. I understand that to be included?—Either the finding of the jury or the judgment of the judge,

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would do away with the difficulty which has been suggested, that it was desirable to publish the facts in order that the public at large should know who was the offender, or what was the class of offence that had been committed.

17,361. Might I suggest that is not quite so, because in a trial by jury there would be a record of nothing but the finding. The judge's judgment would be simply a *decree nisi*?—If there was anything said by the judge to exonerate one party or the other.

17,362. He would have the opportunity of making a small reference to it in his judgment, bearing in mind that was the only thing that was to be published?—Yes.

17,363. Your proof does not touch upon a large subject which we have had under consideration, namely, amendments of the law. If you have left it out because you do not wish to express an opinion for yourself or the others, I will not ask you anything upon it, but if you have any opinion you have formed upon that, we may as well have it?—I certainly have with regard to cases of lunacy. I think it is an intolerable hardship, and possibly may lead to much trouble and immorality.

17,364. How far does that express your own view alone or that of your colleagues?—Certainly my own view and those of my colleagues to whom I have mentioned it. It was not submitted to our council, but certainly those to whom I have mentioned it I think unanimously agree with me.

17,365. To what number are you referring?—There are 14 of us. I suppose I have spoken to six or seven of them about it.

17,366. Is that the only point you have mentioned? Have you mentioned anything about the other subject which has been before us?—Habitual drunkards.

17,367. Cruelty, desertion, and crime?—No, I do not think I have discussed it with them. I certainly think, with regard to desertion, there ought to be power for either party: that applies particularly to the wife.

17,368. Bristol, to a certain extent, is a seaport?—Yes.

17,369. You have Avonmouth, and there is a considerable sea-faring population?—Yes.

17,370. Have you known any cases in which either husband or wife has disappeared abroad?—Very few. The tendency is, of course, amongst the younger men, now, to go to Canada. I have known a few of those cases, but not a great number.

17,371. I do not know whether you desire to say anything about cases of cruelty or not?—No, but I certainly think that in cases of cruelty, where the wife's life or limb or health is in danger, in consequence of the persistent cruelty of the husband, she should have power to obtain a divorce.

17,372. What do you say as to crime?—In cases where a man has punishment of, say, anything over five years' penal servitude, five years or upwards, there ought to be power to the wife to apply, for this reason. If he has been a good husband we may be quite sure she will wait for him: if he has been a bad husband, then it would be very hard on her to have to live and keep the children whilst he was in gaol, and have him come back and perhaps live with her or upon her.

17,373. These last points are your own? You have not discussed them with your colleagues?—That is so.

17,374. The only point you have discussed with them is insanity?—That is so.

17,375. I think that exhausts your proof?—Might I add one other case: I do not know whether it has been referred to here; that is in reference to the most despicable creature I know, the man who lives upon his wife's prostitution. I am sorry to say it is by no means an uncommon thing, and I submit that in cases of that sort, where the court is satisfied that the wife has been driven to it by her husband, she should have means of getting a divorce.

17,376. She has now; she can prove a case of misconduct, and then has an adequate ground of divorce?—Yes, but the difficulty is that he, perhaps, may not be guilty of misconduct himself.

17,377. You mean that particular offence itself should give her—for instance, if people can rescue her—the opportunity of saying: "You have driven me to

"this, and I ought to be freed from you"?—It has been done by elderly men with young women.

17,378. I do not think that suggestion has been made to us?—I have seen unfortunately quite a small number of these cases, where it seems pitiable that the poor woman should be tied up to such a man for her life, where I am sure if she could get release she would get it.

17,379. It would probably only be capable of being put in force by people who had helped her out of her position?—It so often happens that these cases come before the police courts.

17,380. In what form do they come there?—As a criminal offence. In all the police courts now, I think I am right in saying, either ladies attend who are interested in rescue work, or some police court missionary, and assistance would always be forthcoming in those cases.

17,381. You think help would be forthcoming?—Yes. I have no hesitation in saying it. But there, again, there would be an advantage in the woman being able herself to file her own petition.

17,382. She probably would be in such a position that unless helped she would not be able to do it. I see your point, and I think it has not been presented before, that in those cases the conduct of the husband, apart from any causes we know of, is such that the woman ought to be able to be freed from him?—I have no hesitation in saying that.

(Chairman.) I think that is a very good suggestion.

17,383. (Mr. Brierley.) The case you mention would be rather rare, would it not?—No, I am sorry to say it is not.

17,384. I quite admit that cases charged under the Vagrancy Act, 1898, are not uncommon, but as a rule a man who is charged with living on the prostitution of a woman is seldom married to her?—I have seen a good few of them.

17,385. I do not say it never occurs, but my experience shows as a rule the man who is charged with that offence is not married?—There are many cases of that.

17,386. I daresay the case you mention may occasionally happen?—It does.

17,387. With regard to separation orders, your evidence agrees with that of a good many other witnesses, that the cases of reconciliation are very numerous indeed?—Very.

17,388. I did not understand what your real objection would be to making the orders temporary, say for six months. Do you think that would induce the woman to think she ought not to be reconciled within that term, or what?—I think the difficulty arises in this way: the two people have litigated; both of them think that the other is more in fault than they are, and if you make the order for a limited period, within which time the parties may approach one another, I think each would wait to see whether the other would come round.

17,389. You think it might work adversely?—I think so.

17,390. You think the better course would be to leave an absolute discretion in the justices to rescind the order?—Yes.

17,391. The present power to rescind is upon fresh evidence?—Yes.

17,392. You think it ought to be an absolute discretion?—Yes.

17,393. (Judge Tindal Atkinson.) Do you agree with the suggestion that all the preliminary work in the carrying out of the decrees, if the county court had jurisdiction, should be done in the London registry and not in the country registry?—I think it should be done in the country registry. The procedure is very simple, much more simple than equity and bankruptcy, which is carried on in the country registry.

17,394. Would you confine it to any particular registries in the country, the district registries?—No; I would let the parties be able to file their petition in the county court registry of the district in which they live. If there were any interlocutory applications, and if they were complicated, they should be referred to the judge, and there should be a right of appeal from an order of the registrar to the judge.

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17,395. (*Sir Lewis Dibdin.*) I take it the effect of your evidence is that you are not in favour of every county court judge exercising this jurisdiction, but that certain judges should be chosen or appointed who should deal with districts?—That is so.

17,396. Take your own district, Bristol, and the neighbourhood. Is it your idea that your present judge, Judge Austin I think it is now, or at any rate the county court judge of Bristol, should deal with the whole circuit in divorce matters from Chippenham to Taunton?—Yes.

17,397. Or are you supposing that a special judge is appointed to deal with the divorce work? I did not quite follow?—No; that a judge, as for instance, Judge Austin, should be selected to take a district, and that district may overlap other county court districts.

17,398. That he should deal with the whole district?—Yes.

17,399. As a practical matter, do you think that the county court judge of Bristol, for instance, has leisure for that?—Yes; our county court judge, I am sure, could deal with it.

17,400. Do you think he has?—Yes, I am quite sure he could deal with that.

17,401. Do you think assizes would be a suitable tribunal to be entrusted with divorce jurisdiction for rather a wealthier class?—I see no reason why not.

17,402. Have you considered at all the suggestion of Mr. Justice Bargrave Deane, of a judge going down from London, a sort of middle course between the county court judge and the assizes?—I think that would take so long.

17,403. I want to take it by steps. You are in favour of assizes for a particular class, or not against it?—Yes.

17,404. Do you think for that class a special judge sent down would be cheaper or better, or not so good?—I do not think so good. I do not think there would be many at the assizes. I think the majority would either be tried in the county court or come to London. There may be one or two at an assize.

17,405. For that it seems hardly worth while to make so great a change to the assize work as adding that item to their work?—It does not appear to me to be any difficulty. It would not alter the class of work. We try ordinary actions and breach of promise actions, and all sorts of things at the assizes. Even now we can try equity matters.

17,406. I am sure your view would be that divorce matters ought to be dealt with rather in a different way from breach of promise actions and cases of that kind; is that not so?—I think that the hearing would be the same. It could be heard before a special or common jury.

17,407. Do you think the assizes could be adapted, or the other suggestion of a special judge, to meet the whole difficulty to obviate going to county courts at all?—I do not.

17,408. You are sure that it is quite impracticable and ineffective?—I am sure. Besides which, the expense to the litigants would be so much greater. The assizes only sit in various towns in the county, whereas county court judges sit all over the place. For instance, if I may give an illustration: supposing in Bath, which is in the county of Somerset, adultery were committed, the petitioner files his petition; he would have to try his case at Taunton or Wells. That would involve the witnesses being taken down to Taunton or Wells at considerable expense, and keeping them there.

17,409. That is why I put the special judge point, because while that is a criticism of the assizes it is not a criticism of a special judge going down to any centre where you want him?—That is true; and if there were a great number tried at the assizes it might become desirable to appoint a special judge, but I do not think that there would be.

17,410. You said something about the expense of the fees, and so on. There is no reason, in the nature of things, why those fees should not be reduced in the High Court just as you think they ought to be in the county court?—Yes, but that relief is so very small to

a poor person. It is immaterial to a rich one. To a poor person it is equally immaterial, because the chief expense is going to London and taking the witnesses.

17,411. That, in your mind, is the real point?—I am sure of it.

17,412. If that could be got over, the need for local hearing would not be so urgent?—No, and the necessity for having to do everything through your London agent.

17,413. I did not understand what you said about the expenses being increased by employing an agent. I was under the impression that it did not add to the costs?—It does, as between solicitor and client, and not as between party and party.

17,414. For instance, correspondence between the country solicitor and the London agent; is that paid for?—Not as a rule.

17,415. That is one of the things you mentioned?—Yes; but when you are being paid by your client you are bound to charge him something for your interviews and correspondence. It is not charged by items.

17,416. Would that be allowed on taxation?—As between party and party, no; as between solicitor and client, on taxation, material letters would, important letters.

17,417. But to a large extent not, I take it?—To a large extent not.

17,418. There was a very impressive case about the guard you gave us, which is a typical kind of case, rather an extreme one, but a very sad case. While you were giving your evidence, I was trying to think how that would be mended if you had jurisdiction in the county court. I was thinking of the question not of expense, but of delay, and you laid great stress upon a year's delay. That delay, I gather, was caused by the case being obstinately fought—very wrongly—but it was?—Yes.

17,419. No law will prevent that; if people are minded to do it they will fight?—Yes.

17,420. Supposing you have the jurisdiction in the county court, in what way would the delay have been saved in that case?—The procedure in the county court is undoubtedly more expeditious than it is in the High Court. It has always been so, and I suppose it always will be so.

17,421. Up to now it has not had divorce jurisdiction. You would have to have the same facilities for applications for alimony, and particulars, and so on, as you have in the High Court, because they are things that are necessary in some cases?—Yes.

17,422. With all that practice that you would have to introduce in some form or other, how would the matter be necessarily expedited by being in the county court?—I think the orders made by the registrars as a rule in the county court for delivery of particulars and filing affidavits are much quicker than you get them in the High Court.

17,423. That could be met by an alteration of the practice of the High Court?—That may be so. Then you see, of course, if I may interpose, a good deal of this delay was that after the case was set down we could not get on. There are so many lists to be taken in the Probate, Divorce and Admiralty Division, certainly more than a dozen different lists.

17,424. This was a defended case?—Yes.

17,425. With regard to the county court, I do not know your experience at Bristol, where I know you have a very prompt judge?—He is the best in the Kingdom, with apologies to Judge Tindal Atkinson.

17,426. Perhaps he is typical. I was going to ask whether in the county court there are not from time to time delays in cases for the same reason, through no fault of the judge, but the business cannot be taken?—Yes; but really the delays are very few.

17,427. I am sure that is so in Bristol. Does your experience lead you to say that is so generally?—Yes, generally. I was speaking for the counties of Gloucester, Somerset and Wilts, and round Bristol. There is nothing to complain of in the way of delay.

17,428. Now with regard to separation orders, you have told us there is very large proportion of reconciliations; that is a matter that has come before us in many different forms, all to the same effect. We have

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been told that we must not lay too much stress upon the number of reconciliations, because a large proportion of those reconciliations are merely illusory; they are cases where the wife has been forced to go back to her husband simply by the impossibility of obtaining maintenance, or the pressure put upon her from that side, the pecuniary side. I observe in Bristol you have a very excellent practice of ordering payment into court, so that the wife has not in the ordinary case to go to the husband?—Just so.

17,429. Would you say, with your very large experience in Bristol, that a large proportion of the reconciliations are of the kind I have indicated?—No, I should say not.

17,430. You think they are real reconciliations?—Yes. May I give you some figures I have for this year. During five months, to the end of May, there were 45 applications to magistrates, and three of the applications were withdrawn. Five were not served. In 11 the parties did not appear at all. It all shows, and this is my experience, that when the parties are given a little reasonable time to think over the seriousness of an application for separation, as a general rule it is dropped. It is a strange circumstance; it seems almost incredible, but it is the fact, that on Mondays there are seven-tenths of the applications made.

17,431. For separation?—Yes. As a matter of fact I am told in Bristol out of 700 applications in the year 500 are made on Monday.

17,432. I am not giving evidence, but it is not difficult to see the reason. They have been drunk, and have had no work?—That bears out what I am saying, that people go in a hurry and make an application, and regret it. Many regret it immediately after they have got the order. I have known cases where people have been living together in the house when the police constable has gone to serve the order of separation. The officer who gave me this information told me of a case in which I knew the parties, that happened last winter, when he went to serve the separation order and found them both together.

17,433. Your evidence is so valuable I want to put another case to you. Have you got any view as to the desirability of changing the law of separation orders, which now requires that the woman should have left her husband before she applies in cases of cruelty?—Yes. I have had quite a number of cases where the women have a business, living in the house over the business premises.

17,434. And a family of little children, I suppose?—Yes. If she has to leave she leaves the business; the business is derelict, or the husband goes down and takes the money for the sale of the commodity she sells, and she has to go away to bring herself within the provision of the Act of Parliament.

17,435. Your view is that ought to be altered?—There is no object in it as far as I can see.

17,436. Have you really considered—I know you have considered—but I want to consider your view, which is that adultery should be a cause for a separation order in the police courts. I see that the clerk to your justices thinks otherwise, Mr. Gore. As it exists now, although popularly it is connected with separation and divorce, the jurisdiction under the Separation Order Act is a different kind of jurisdiction from the divorce jurisdiction?—Yes.

17,437. It is for offences which are criminal, or quasi criminal, cruelty, desertion, failure to maintain, or habitual drunkenness. I quite feel the difficulty of it, but do you think it would be wise to mix that jurisdiction with an issue of adultery in the first instance?—I do, for this reason. A woman has no remedy at the moment—she is a poor woman—because we must recognise she cannot get a divorce.

17,438. Even in the county court?—But she may not want a divorce. It may be that a woman may find her husband is misconducting himself with another woman; she may not be willing or anxious to release him altogether. There may be many reasons; it may be she may hope by getting a separation for a time he will come back, and it will be beneficial for herself and the children. Of course it is wonderful how tolerant and forgiving women are.

17,439. Supposing your own suggestions were carried out and jurisdiction was conferred on the county court, would you be in favour of the extension of the magistrates' orders still?—Unless you gave the county court jurisdiction to make orders of judicial separation, because at the present moment if you do not do that the woman's difficulty is this: she must either go for a divorce or let matters go on as they are. The intermediate course is to give her the relief she is entitled to because of the misconduct of the man, who is not entitled to be considered at all, and allow her to ask for a separation, so that he may maintain her. The result probably would be that the man, finding he would have to maintain her and the children, and being unable to find the means for both the other woman and his wife, would come back.

17,440. Your suggestion is to create a jurisdiction in the county court for divorce, and jurisdiction in judicial separation for the justices?—Certainly.

17,441. I confess the practical difficulty that arises in my mind as to that is as to the county justices. I have no doubt you have experience of petty sessions in the country. Do you think, speaking with all respect to a county bench, on which I sit myself—I should be wrong if I did not speak of them with respect—that is the sort of tribunal which is really competent to decide the issue of adultery in the way that it is brought before a police court? You know the way these cases are brought in?—It is not an ideal tribunal, perhaps, but I think substantial justice would be obtained. It has to be remembered now that all magistrates' clerks must be qualified professional men. There is an advantage in that, because any circular that was sent to them as to the necessity of providing for certain things to be proved, hedging it round with a certain protection, would be observed.

17,442. That is your view?—I certainly think so.

17,443. You have said that there are some orders for separation which are put an end to on account of the misconduct of the woman?—Yes.

17,444. We have had a certain amount of evidence about that. Is it your experience that it is rare for orders to be discharged on that ground?—I think there were 11 last year. I think you will find it at the end of Mr. Gore's statement.

17,445. May I ask out of how many was that?—About 140.

17,446. 11 were discharged by reason of the misconduct of the wife?—Yes.

17,447. Would you say that was typical?—Yes. It must have been, I think, for the misconduct of the wife, but I think Mr. Gore said it was for the misconduct of the wife and other causes.

17,448. That does not quite answer my question. It will answer the question if you can tell me in your view whether it is infrequent or frequent?—I should not say very frequent, but there are a fair proportion of cases.

17,449. That affords some gauge of how far the separation orders, in the case of the woman, at any rate, leads to misconduct afterwards?—That is so.

17,450. (*Lady Frances Balfour*.) I want to ask you a question about men living on the prostitution of their wives. You give that as a cause for divorce?—I certainly would.

17,451. I am afraid that women who have to work amongst women might endorse what you say, that it is not altogether uncommon. It usually begins with the man suggesting it?—Yes.

17,452. And then enforcing it by violence?—Yes.

17,453. Or by depriving her of the means of living unless she does that?—That is so, in my experience, entirely.

17,454. We had a good deal of evidence, especially yesterday, from a body which belong to the Church of England, which said that marriage was indissoluble, and that "for better for worse" covered every action on the part of either spouse. Do you think that the divine law or the human law contemplated "for better for worse" meant such lives as women have to live under the conditions you state?—I cannot believe it.

17,455. You would feel that was not a position which could be judged at all by those texts which are

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[Continued.]

quoted about the indissolubility of marriage?—I do not at all agree.

17,456. (*The Earl of Derby.*) You say you do not think divorce proceedings should commence within three months after discovering one of the parties is guilty?—Yes.

17,457. Have you not known cases when a man has found his wife has committed adultery, she is going to have a child which is undoubtedly not his, he has divorced her and she has married the co-respondent, and that has legitimised the child?—Yes.

17,458. Supposing you would not allow any proceedings for three months, you practically make it impossible for such a case to happen, and the child would be illegitimate?—Those cases are very rare.

17,459. (*Sir Lewis Dibdin.*) They must be rare, because there is six months to wait for the decree nisi?—They are very few. At the present time if proceedings were commenced at once you would be very unlikely to get the case on within three months, and then you do not get your decree absolute for another six. I think those very rare cases that might happen as illustrated by you should not prevent a proper protection being given against people in a hurry commencing proceedings which, because they are commenced, are gone on with.

17,460. (*The Earl of Derby.*) I do not know what the position of a child is which is undoubtedly not a child of the petitioner but is of the co-respondent. What is the position of that child if born between the decree nisi and the decree absolute?—It would depend on evidence of cohabitation. No doubt my Lord would know better than I, but that is my submission, that it would clearly depend on evidence of cohabitation, the reason I apprehend being that the decision of legitimacy or illegitimacy is decided upon the question of the interests of the child, not of the parties. Therefore if cohabitation or access could be obtained, then a child begotten during matrimony would be presumed in its own interest to be legitimate.

17,461. With regard to getting money for the defence in the case you mentioned, his Lordship has suggested that the solicitor should give an affidavit to say he thought she had a legitimate defence?—Yes.

17,462. But supposing he did not think she had a legitimate defence, and yet had to defend her, would it not rather prejudice her case if he did not give an affidavit?—You mean that an inference might be drawn?

17,463. Yes. Would not the mere fact of the solicitor having refused to give the affidavit affect the case? My point is that the solicitor for the defence would practically say, "I do not think this is a very good case and I cannot give the affidavit"?—That should not be allowed to come before the jury, in the same way as payment into court is not allowed in an ordinary common law action to come before the jury.

17,464. It could not be brought into court?—I do not think so.

17,465. (*Mr. Burt.*) You mentioned cases of reconciliation under the separation orders, and I understood you to say that there was about one third of 140 cases which were reconciled. Have you any experience as to how far those reconciliations are permanent? Do differences subsequently occur in cases of the kind?—Yes, they do, but they are comparatively few. You do find cases where parties may come before the court two or three times, but as a rule I think the experience of one visit to the magistrates, if the parties are inclined to agree together afterwards, is sufficient, and they do not come before the court again. That is my experience.

17,466. With regard to publication, you would prohibit the publication of objectionable details?—I would, undoubtedly.

17,467. It was stated by the previous witness that publication acts as a deterrent to misconduct. Do you agree with that?—I confess I do not, because I think as a general rule if people are going to misconduct themselves they hope and believe they will not be found out. If they are so hardened that they do not care whether they are found out or not, then I do not think anything would act as a deterrent.

17,468. So far as it acts as a deterrent, assuming it does, would it not, in your opinion, be effective in the same way if the names and other conditions which you suggest were published?—I think so, more particularly if it were reserved to the judge to make any observations he thought fit, and those should be published. My point is, we are not to consider the feelings of the offenders, but to consider the interests of the public.

17,469. With regard to the extension of the grounds of divorce, I understood you to say that you would include lunacy?—Yes.

17,470. I do not know whether you put any limit of time to that. Would it be in the case of medical testimony to the effect that it was likely to be incurable lunacy?—I think it should be positive. I think the testimony should be as near positive as it is possible. I have known a case, on the question of lunacy, where a clerk who was about 30 years of age was married to a very nice-looking woman who was 28. They had three little children. He became a lunatic. Of course his means of supporting her were gone, and she was left stranded. If she could have married again, she would have found a happy home for herself and the children. She was unable to do so, and I have reason to believe that her good looks have been a temptation to immorality.

17,471. I understood you to be inclined to include desertion also?—Undoubtedly, for the same reason.

17,472. Do you suggest any limit of time?—Yes, there certainly should be a limit of time for desertion. You cannot tell whether a man intends wilfully to desert his wife until he has been away some material time, leaving her and the children to get on as best they can. I do not think it should be less than two years.

17,473. (*Chairman.*) With regard to a special judge from the High Court going round the country, do you think that one judge could possibly cope with the whole of the country?—I am sure he could not.

17,474. That would leave too long an interval before he returned to any particular point?—Yes. The object of giving local jurisdiction is to make it cheap and expeditious.

17,475. You suggest an interval between the offence and the application for divorce?—I do.

17,476. Would you also suggest an interval between the offence, founding an application to the magistrate, and the application?—No, because the parties can put an end to that themselves, at once.

17,477. You said that on Mondays, probably as the results of Saturday's amusements, there were a lot of these applications. If there was an interval interposed, might not that knock a good deal of that on the head?—In my experience I do not know whether that is universal throughout the country. Either the magistrate or the clerk investigates the cases before they issue the summonses.

17,478. Probably they would not issue them?—They do not. They are more sceptical on Monday than any day of the week.

17,479. Perhaps that is sufficient?—Yes.

17,480. You were asked about the country benches. Do you think the cases might at present be considered as decided by the magistrates' clerks at petty sessions?—There is a great deal of that, I am bound to say.

17,481. Would you suggest they should be made into the tribunal?—No, indeed, I think not.

(*Chairman.*) Thank you very much. Your evidence has been very valuable indeed.

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[Continued.]

Mr. GEORGE AUGUSTUS LIGHTFOOT called and examined.

17,482. (*Chairman.*) You are a member of the firm of Messrs. Saul and Lightfoot, Solicitors, of Carlisle and Maryport, in the county of Cumberland?—Yes.

17,483. Have you been practising as a solicitor for 20 years, with offices in the City of Carlisle and the West of Cumberland?—Yes.

17,484. The poorer classes of the population in the West of Cumberland include coal-miners, iron and steel workers, and dock labourers. In Carlisle there are a large number of railway men, and men, women and girls employed in various factories, with a large rural population in the surrounding district?—Yes.

17,485. Have you had a large practice in the local courts?—Very large.

17,486. And have you been concerned in many hundreds of cases in connection with matrimonial causes and disputes?—Very many.

17,487. I take it those cases are before the magistrates?—Yes.

17,488. Have you had cases that have brought your clients into the Divorce Court?—I have; both suits *in formâ pauperis*, and suits that are not *in formâ pauperis*.

17,489. What is your view about the jurisdiction of local courts in divorce cases?—I should confer the jurisdiction on county courts, and give certain county courts only jurisdiction. I mean I would not give jurisdiction to all county court judges, but I should let the county court judge select the particular courts in his circuit to exercise the divorce jurisdiction. May I read what I say in my proof about it?

17,490. If you please?—*The question of conferring jurisdiction on any and what Local Courts subject to any and what limitations—Procedure in such courts. A Classification of the poorer Classes of Society who invoke legal aid.*—The persons invoking legal assistance in such matters may, for the purposes of the present inquiry, be classified as follows:—(a) the lowest classes, (b) the agricultural labourer class, (c) the respectable artisan class, and (d) the lower middle class, including small tradesmen. *From what classes they are mainly drawn.*—The large majority of applicants come from classes b and c. There are very few from the lowest classes, although their conditions of domestic life are the most miserable. The reason undoubtedly is that drunkenness and immorality and cruelty are in many cases mutual. There are but few applicants from class d. The lower middle class are better educated, live under superior conditions, and, where grounds for proceedings exist, except in most flagrant cases, are content to bear their ills rather than incur publicity and family disgrace. A most fruitful cause of matrimonial trouble among the poorer classes of society is the improvident marriage. The parties marry at a ridiculously early age, the husband has no ready money to provide the home, the furniture is obtained on the hire system, the wife gets into debt, often unknown to the husband, the man deteriorates, takes to drink, the wife and children are neglected and frequently persistently abused. A large number of young couples make the mistake of living too near to, and allowing interference by, their respective parents, and the introduction of the mother-in-law has the usual result. Very often to follow the advice of removing away from both sets of relatives has a most satisfactory result. Many such marriages are "forced marriages," namely, marriages contracted to legitimise issue. Very few such are satisfactory. It is significant also that a considerable proportion of matrimonial suits arise in cases where there are no children of the marriage. *Modes of Settlement.* (1) *Reconciliation.*—A very large number of matrimonial disputes, even where the fault is on one side, are settled amicably. The offending spouse calls to see the solicitor in response to a letter threatening proceeding, and a reconciliation is effected. In some cases the reconciliation is permanent, but in the majority acute differences recur. (2) *Deed of Separation.*—Then, again, many cases are settled by deed of separation. Only in a very few instances do the parties

remain apart permanently or for any considerable time. (3) *Applications under Summary Jurisdiction Married Women's Act, 1895.*—Other cases and the larger number result in applications to the court under the Summary Jurisdiction Married Women's Act, 1895. *Except for granting temporary orders jurisdiction under this Act should be transferred to county courts.*

17,491. Do you mean that the magistrates' power should be limited in time?—Yes.

17,492. What length of time?—Two months, I suggest.

17,493. Will you give the reasons which have led you to that?—Yes. In the first place, except for the granting of temporary orders, limited, say, to two calendar months, I would recommend that the jurisdiction in the administration of the Act be taken away from magistrates and conferred on county courts. Were it not for the fact that in many districts the judges do not sit oftener than once every calendar month (which would occasion serious delay) I would be in favour of taking away from the magistrates all jurisdiction under the Act. The reasons for the suggestion are these; my opinion is based on the following grounds:—The magistrates, especially in certain districts, are, I am convinced, too much inclined to grant orders on insufficient grounds.

17,494. Are you speaking of the ordinary magistrates?—The ordinary justices; not stipendiaries, of whom I have had no experience.

17,495. There are none in your part?—No. They occasionally fail to distinguish between a genuine applicant and one who applies on frivolous grounds, very often without the slightest corroboration of her case. The granting of an order in the latter case and its publication prompts other people to make similar applications, and a wife is led to believe that a few rough words and an odd blow will entitle her to what is, in fact, an order of permanent separation. Magistrates in other cases have difficulty in deciding what amounts to "legal cruelty," and appear to think that nothing short of regular and severe physical chastisement entitles a woman to succeed. I am satisfied that the trained legal mind of a county court judge would be a more satisfactory tribunal. If magistrates retained their jurisdiction to make a temporary order under the Act, the parties would have time for reflection, and might within the period come together again, and only cases where a permanent separation was really necessary and desired would come before the county court. Another reason is, I consider that the subject matter of an application under the Act belongs more properly to a civil court. The respectable woman, possibly with a family, likes to keep out of a criminal court. The very name of "police court" frightens her; she is inclined to put up with much ill-treatment rather than, as she considers, disgrace her family and herself by going into such a court. I have been particularly struck with this in many cases. She would not have the same objection to going into the county court. I recognise that if all applicants in the first place had to come before the magistrates for temporary orders, this difficulty would be perpetuated, and this is one reason why (apart from expediency) I would have suggested that all jurisdiction of the magistrates should be taken away, but the granting by magistrates of temporary orders is the only suggestion which I can make to meet the difficulty of delay.

17,496. That partly seems to be because you want the order at once?—Yes.

17,497. You perhaps cannot have a county court judge for a month?—That is so. If jurisdiction were only conferred on certain county courts who have registrars, who are district registrars and men of experience, that difficulty might be got over by an application in the first place made to such a person, and that would obviate the necessity of going into a criminal court. I know courts within the circuit of our county court judge where the registrar would be a man of sufficient experience to deal with a case of that kind, but there are other registrars in country districts

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[Continued.

whom you could not expect to have the same experience brought to bear on cases, and in those cases I think there might be a difficulty. Then, with regard to petitions for divorce, certain county courts should have jurisdiction in divorce cases, subject to limitations. This is as distinct from separation cases. In my opinion there is at the present time what amounts to a denial of justice to the poorer classes. I agree with those witnesses who have already given evidence before the Commission in their view that the cost of even an undefended suit under the present system is prohibitive. In my own experience I have met with cases of great hardship. Sometimes the innocent party is so appalled at the estimate of expense that the idea of taking divorce proceedings is abandoned, and in other cases a few shillings per week have to be saved until the required amount is raised, and there is a denial of the remedy to which the party is entitled, for many years. Just at the present time I am acting on instructions now given 1 year and 9 months ago, on behalf of a clerk in the travelling post office, a clerk employed by the Post Office, whose duty it is to travel up and down the line and sort the letters as they are being carried. His wife left him some 2½ or 3 years ago, and she is a prostitute; the difficulty is obtaining evidence and getting it to London. The evidence of an inquiry agent would require to be corroborated. If a man like that asks you to give him an estimate of expense, you cannot possibly put it lower than 30*l.* or 40*l.*, assuming there was no defence.

17,498. Supposing you had a judge of the High Court or county court sitting in Carlisle, and the proceedings taken there, what do you think it ought to be easily done for, as compared with the 30*l.* or 40*l.*?—In the county court?

17,499. In a court sitting there, with the proceedings all taking place on the spot?—I am going to put in a statement showing the estimated cost. It is supplemental to the proof. May I finish what I was going to say with regard to the case I mentioned? That man's wife has left him and is a prostitute. She was in Bristol and Glasgow, and I think she has been in Cardiff. I believe she is now in London. At all events, he is now saving up so many shillings a week, and has been saving up many months, in order to guarantee 40*l.* or 50*l.* to get his case through.

17,500. What has led to her being in that state of life?—She was an actress when he married her, and I think she probably had drinking habits.

17,501. Would you think it satisfactory to apply what we have heard of, the "for better for worse" principle to cases of that sort?—Certainly not. I do not think the "for better for worse" principle could apply a case of that kind.

17,502. Have you had experience which leads you to think that is a common or uncommon case?—I should say it is a typical case. I have had other cases of a similar kind. I cannot say I have had a great number of cases of that kind, but at the same time it is a typical case. So far as I know there is nothing against the man; he is a hard-working fellow getting 30*s.* a week, or something of that kind. In my view the most suitable tribunal to exercise jurisdiction with a view to meeting this difficulty is the county court. Shortly the advantages would be less cost and less delay. As to cost, I would estimate the expenses in an ordinary case, where legal assistance was required, at from 5*l.* to 10*l.*, including witnesses, but exclusive of court fees. The court fees might be fixed on a moderate scale. With regard to that, may I put in front of you what I have prepared, which represents a typical bill in county court practice at the present time, under Scales B. and C.

17,503. Applied to this sort of suit?—There is no procedure at present. It is difficult to say it would apply, but it would not differ materially from a case which arises under Scale B. or Scale C.

17,504. Is this a typical statement of a case conducted in such a way as you think a county court case of divorce would be conducted?—Yes.

17,505. It speaks for itself?—Yes.

STATEMENT showing COST of LITIGATION on SCALES B. and C. in the COUNTY COURT.

(A.) Without Counsel.	(B.) With Counsel.
" A."—Without Counsel.	Scale B. Scale C.
	£ s. d. £ s. d.
Letter before action - - -	3 6 3 6
Instructions - - - - -	6 8 13 4
Preparing statement of claim or petition - - - - -	12 0 1 1 0
Attending to enter - - -	6 8 6 8
Notice to produce - - -	4 0 5 0
Service - - - - -	1 6 1 6
Perusing notice to produce - - -	5 0 6 8
Notice to admit - - - -	4 0 5 0
Perusing notice to admit - - -	5 0 6 8
Attending inspecting docu- ments - - - - -	6 8 6 8
Attending to produce docu- ments for inspection - - -	6 8 6 8
Subpoenas and attending for leave to serve, say, four witnesses - - - - -	12 0 1 0 0
Examining and taking minutes of evidence of witnesses. Four witnesses, 3 <i>s.</i> 4 <i>d.</i> each (B.), 6 <i>s.</i> 8 <i>d.</i> each (C.) - - -	13 4 1 6 8
Attending conducting cause - - -	1 1 0 2 2 0
Drawing bill of costs and copy. Fos. 5 - - - - -	3 4 3 4
Copy for other side - - -	1 8 1 8
Appointment to tax - - -	3 4 6 8
Notice and service - - -	3 0 3 0
Taxation - - - - -	6 8 6 8
Postages - - - - -	5 0 10 0
£	6 11 0 10 2 8
Witnesses allowances, say four at 5 <i>s.</i> - - - £ 1 0 0	
" B."—With Counsel.	Scale B. Scale C.
	£ s. d. £ s. d.
Instructions to counsel to advise on evidence - - -	3 4 6 8
Instructions for brief - - -	1 11 6 3 3 0
Drawing brief, 50 folios at 1 <i>s.</i> per folio - - - - -	2 10 0 2 10 0
Fair copy, 4 <i>d.</i> per folio - - -	16 8 16 8
Copy of necessary documents, 4 <i>d.</i> per folio - - - - -	10 0 10 0
Attending counsel - - -	3 4 6 8
Attending to appoint con- ference - - - - -	6 8 13 4
Counsel's fees :—	6 1 6 8 6 4
Brief - - - - -	3 5 6 5 10 0
Conference fee - - - - -	1 6 0 1 6 0
£	10 13 0 15 2 4
<i>Note.</i> —Where no local bar, counsel requires 10 <i>l.</i> 10 <i>s.</i> on brief.	
SUMMARY.	
Solicitors' costs. Without counsel - - - - -	6 11 0 10 2 8
Solicitors' costs. With coun- sel - - - - -	12 12 6 18 9 0
Less—Minutes item - - -	13 4 1 6 8
£	11 19 2 17 2 4
Cost to litigant :—	
With counsel - - - - -	16 10 8 23 18 4
Without counsel - - - - -	6 11 0 10 2 8

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[Continued.]

17,506. On Scale B. the solicitor's costs without counsel are 6*l.* 1*l.*s., and on Scale C. 10*l.* 2*s.* 8*d.*?—Yes. With counsel there is an addition of 6*l.* 1*s.* 6*d.*. The total cost with counsel on Scale B. is 16*l.* 10*s.* 8*d.*

17,507. Therefore, whether with or without counsel, you have a very greatly different total to what you would have at the present time?—Yes.

17,508. Have you allowed in that statement for witnesses?—In addition to that I have added four witnesses, assuming they are local.

17,509. And their expenses?—Their allowance would be about 5*s.* per head, another sovereign. I think the estimate I have formed of 5 to 10 guineas would be sufficient. I do not think it would be less than that, and I do not think in any ordinary case the expense would exceed that. You will see it makes a difference whether counsel are employed or not.

17,510. I think you have treated counsel too liberally for this class of case?—It is only according to scale. The extra expense is not merely counsel, but the solicitor comes out much better. He gets more out of a case if he employs counsel than if he does it himself.

17,511. That is a matter of arrangement, according to scale. Supposing it was of advantage to the public generally that counsel should not be employed, those figures would be reduced?—Take Carlisle, which has a population of 50,000 or 60,000, a large district that has no legal bar, but according to court rules—

17,512. I believe they attend quarter sessions. Assuming they sit at quarter sessions, there would be no difficulty?—Of course that may be so.

17,513. That difficulty might be met?—Quarter sessions would be four times a year.

17,514. That is fairly sufficient to deal with the crime cases, and I do not see why it should not be sufficient to deal with these other cases. Will you continue your proof?—A cost of from 5*l.* to 10*l.* might be said to be prohibitive in some cases, but the difference between such estimate and the average cost of divorce in London is great, and to a certain extent, the very poorest of our population are now debarred from taking advantage of legal proceedings in suits other than matrimonial on account of the cost involved even in the county court. They would, therefore, be no worse off in this respect in matrimonial causes. That there would be less delay in proceeding in the county court is obvious. I think that it would be an exceptional case in which the party could not raise the sum I have named. The working classes now pay solicitors who have reputations as advocates, a fee of from 3*½* to 5 guineas for conducting cases in police courts outside the solicitors' district. I do not consider it necessary to make the cost of obtaining a divorce less than the figure I have quoted. *Some objections to the Jurisdiction of the County Court considered.* (a) *Unpopularity of County Courts.*—It has been suggested that county courts are not popular. This is contrary to my experience. I certainly do not think that a genuine applicant for divorce would be deterred by any such reason. (b) *Danger of Collusion.*—As to collusion, instead of there being greater risk of this, I am of opinion that there would be considerably less. The parties to the suit, their history, and the circumstances of the case are much more likely to be known by the bailiff daily visiting the districts, and officials of the county court of the district in which the parties live, than if the case were tried in London. Collusion would be more easily detected, and the intervention of the King's Proctor, or his local substitute, the more readily obtained. (c) *Unreliability of County Court Juries.*—As to county court juries, I do not think they deserve the criticisms passed upon them by certain witnesses who have given evidence before the Commission. They are drawn from exactly the same class as High Court juries, and I have never heard them condemned as possessing more failings than characterise any jury. In our district juries are very seldom demanded. Of defended cases, I should say that not more than two per cent. are tried by a jury, and if jurisdiction in divorce was conferred on the county court, I should anticipate that, unless trial by jury

were made compulsory, almost all cases would be tried by the judge alone. Personally I should regard county court juries as more reliable than common juries in the High Court owing to their method of selection. Registrars usually select a jury with special regard to the particular case they have to try. For example, where the facts of the case involve a knowledge of machinery, he can select a jury of engineers. Juries in the High Court are selected without regard to the case they are called upon to try.

17,515. Would your experience lead you to the conclusion, if this divorce jurisdiction were conferred, it should be conferred on the judge alone without any juries?—I should allow it to be open. I should not make it compulsory to try before the judge alone. I would not deprive a man of the right to be tried before a jury. Districts differ, but in our district I am satisfied in almost 95 or 97 per cent. of cases they would come before the judge alone.

17,516. Possibly it depends upon the general estimation they have of the judges?—I suppose it does; it probably comes to that. That has something to do with it. Then: (d) *Congestion of business in County Courts.*—As to the suggestion that the business of county courts is already in a state of congestion. I conceive that such may be the case in certain populous places, but it is certainly not so in any of the districts of the circuit of our county court. (e) *Suggested Unreliability of County Court Judges.*—I contend that there is no foundation for such a suggestion, which amounts to an insult. It seems to me absurd to say that courts, the jurisdiction of which is being increased from time to time, and which have already exclusive jurisdiction locally in such matters as the Workmen's Compensation Act, bankruptcy, and the winding up of companies, are not fit to deal with matrimonial causes. It so happens that during the last few weeks the decisions of our county court judge in two cases, under the Workmen's Compensation Act, have been restored by the House of Lords. I think that is not strictly accurate. In one case the decision has been restored, and in the other case it has intimated agreement with the county court judge but has not given its judgment formally. Then: *Suggested Limitations to the Jurisdiction of County Courts.*—(1) I suggest that in cases where the property of the parties did not exceed 100*l.*, and the weekly earnings did not exceed 3*l.* a week, the county court should have exclusive jurisdiction.

17,517. Is it necessary to say "exclusive"?—No. (2) That in other cases the High Court should have power to remit any case for trial to the county court. (3) That an appeal should lie from the county court to the High Court. What I mean is this: Supposing the earnings were in fact more than 3*l.*, but perhaps not very much more, in special circumstances the court could remit.

17,518. On application to the President?—Yes. (4) That the recovery of damages in the county court should be limited to 100*l.*

17,519. Would that be so in an order for remitting?—I should make that so, in an order for remitting. *Suggestion that only certain County Courts should have Jurisdiction.*—I would not approve of every district of a county court circuit having jurisdiction. I think it desirable that it should be confined to certain county courts. I would leave it to the county court judge to nominate the particular courts. He would naturally select courts to cover the various centres of his circuit so as to be within easy distance of the population. Under the County Courts Act, 1903, which extended the jurisdiction of county courts by Order in Council, the extended jurisdiction is only conferred on certain county courts. I think an objection to every court having jurisdiction lies in the fact that some of the smaller courts in scattered districts only sit once in two months—that is so in our county court—which would occasion delay, and, moreover, in the more important centres, the registrars are men of greater experience. Some of them, in addition to being registrars of the county court, are district registrars of the High Court, and

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as such, are accustomed to deal with High Court actions commenced by writ, issued in the district registry up to the time of trial at assizes. I am satisfied that in some circuits it would suffice if the jurisdiction was confined to courts where the registrar also acted as district registrar or in addition to such courts as have jurisdiction in bankruptcy.

17,520. Are there registrars who have jurisdiction in bankruptcy that are not registrars of the High Court?—Yes, there is one at Cockermouth, about 20 miles away; they have jurisdiction in bankruptcy. He happens to be a man of great experience, but he is not a registrar of the High Court.

(Judge Tindal Atkinson.) At Chelmsford my registrar is not a registrar of the High Court, but he is a bankruptcy registrar.

17,521. (Chairman.) It comes to this: that jurisdiction might be exercised where the registrars have, either because they are High Court registrars, or have been entrusted with some important jurisdiction, shown their capacity to act practically as much as a Master in the High Court?—I think the judge of the court would know.

17,522. It could be easily arranged?—Then: *The question of separation orders. Their extent and effect, and whether, and if so, what amendments should be made in respect thereof. Effect and operation of the 1895 Act.*—I consider the general operation of this Act to have been most beneficial. It has certainly put an end to a most miserable existence on the part of many a wife. I cannot say that it has encouraged immorality. Certainly, speaking from my experience in the county of Cumberland and parts of the adjoining counties, very few cases of such have come to my knowledge. The respectable artisan class and lower middle class are not immoral, and the lowest classes, as I have said, do not take advantage of the Act. In some cases there is a disposition on the part of the wife to apply on frivolous grounds, but I have found, generally speaking, that women make application under the Act as a last resort—sometimes after years of neglect and abuse. *Suggested amendments of the Act and reasons for same.*—I suggest that certain amendments of the law are absolutely necessary, and for the reasons which I am about to give. *In certain cases previous separation under deed should be no bar to relief.*—Very many cases of injustice and hardship have arisen owing to the fact that according to the Act as it at present stands, the previous execution by parties of a deed of separation is a bar to subsequent relief under the Act. As I have said, in the case of the most respectable and deserving class proceedings under the Act are taken as a last resource, and very often are preceded by a deed of separation with a view to avoiding publicity. In numerous cases the husband, perhaps, conforms to the terms of the deed, and pays the amount agreed to be paid for some little time. He then stops his payments, and the wife, so as to avert starvation, decides to obtain an order of the court, say, on the ground of the husband's persistent cruelty. She then finds that she has bartered away her rights by having previously separated under the terms of the deed, and she has to be advised that her only course is to sue for the arrears under the deed in the county court, and to keep on suing whenever the payments fall into arrear, or return to her husband with the almost certain result of having to submit herself to further cruelty. This unfortunate position arises owing to the terms of section 4 of the Act, under which it is a condition precedent to the application for an order on the ground of cruelty or neglect that it was in consequence of such misconduct on the part of the husband that he has "caused her to leave and live separately and apart from him," whereas on the facts in the hypothetical case quoted, the separation has not been on account of the cruelty or neglect, but voluntarily under deed. It is clear that according to a long series of decided cases the offence of desertion can only take place during cohabitation, and that where the husband and wife have separated

by mutual agreement, the mere refusal of the husband to continue the payment of alimony under the agreement does not constitute desertion, so as to give the justices jurisdiction. And this applies in a case where the husband may have failed entirely to pay the allowance covenanted to be paid. In the hypothetical case quoted, therefore, the woman cannot take proceedings for desertion and, because she has not been caused to "leave and live separately and apart" from the husband (according to the words of the section) she cannot take proceedings for cruelty and neglect. The alteration in the law which I suggest is that under the circumstances mentioned, notwithstanding the prior deed of separation, a wife should be at liberty to apply to the court having jurisdiction under the Act, and on proof that the terms of the deed of separation have not been performed by the husband, the court should have power to hear and decide a case on its merits, as though the deed of separation had never been executed. I suggest that the court should not be bound on proof of facts entitling the wife to relief, to limit the order for alimony to the amount mentioned in the deed, because I have found in my experience that, to avoid publicity and disgrace, women are willing to accept under a deed of separation less alimony than they are clearly entitled to. *Orders should be capable of enforcement after the expiration of seven days instead of one calendar month.* An alteration of the law to this effect is essential. Under section 9 of the Act it is provided that orders may be enforced in the same manner as affiliation orders, and under the Bastardy Laws Amendment Act of 1872 orders under such Act are only capable of being enforced after the expiration of one calendar month from the time of making them. This really means that a period of five weeks frequently elapses before the order is enforced, and during this time the wife, and it may be a number of young children, are dependent on the wife's resources. *Payment of weekly sums under section 5, sub-section (c) should be made payable into court.* At present, under the sub-section referred to, the court may order payment to the woman personally, or to a third person, or for her use to any officer of the court. I suggest that it should be made compulsory to make the payment into court. Under such circumstances the husband would feel that he was still in the hands of the court, and would be much more likely to make his payments regularly. The system would have this further advantage that in the case of an application to enforce the order, the books of the court would constitute a record of the payments made and exact arrears. Cases frequently occur under this Act and under the Bastardy Acts, in which, when the money has been paid personally, a proper account has not been kept, and it is difficult to ascertain the exact amount of arrears. I do not approve of the suggestion that the employer of the husband should be served with a notice to pay to the wife that portion of the husband's wages which represents the amount of the order. I am strongly of opinion that the result would be unsatisfactory, and that the man would in many cases lose his employment, because the employer would object to be troubled in the matter, and prefer to engage someone else.

17,523. Would that be met by making it subject to the acceptance of the order by the employer? It might be served upon him, and he might say: "I assent, and will pay so much to the wife"?—I think if he had any trouble the employer would wink at anything he saw in the press, but directly he had any communication from a court, or any communication made officially in the matter, he would tell the man to go.

17,524. We have been told in some cases employers would not take that view, but would be ready to accept?—Some would not, but I think a lot would.

17,525. Would it be any good inserting a proviso that if the employer chose to assent he would be at liberty to act on it, and that would be a good payment against the husband?—That would involve communication with the employer.

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17,526. Simple service of an order with the signature on it indicating that it was accepted?—On the employer.

17,527. He would be entitled on that to pay direct to the court?—That would be a great safeguard to the wife; but, on the other hand, I am afraid it would be perpetuating the mischief. The employer would say, "I will not have anything to do with your domestic troubles."

17,528. He could say that, but some public-spirited employers would say, "No, I am ready to act on this." We have had it suggested that employers would?—I think some would; a right-thinking employer should, but a lot of employers would not.

17,529. At any rate it is worth considering?—Undoubtedly. "*The Question of Publication of Reports of Divorce and Matrimonial Causes.*"—I agree with "other witnesses who have expressed the opinion that publication should be confined to the names of the parties, the subject-matter."

17,530. What do you mean by "the subject-matter"?—That it was a divorce case.

17,531. A divorce case simply, without setting out what appeared in the pleadings?—Yes.

17,532. You would have the names of the parties, that it was a suit for divorce, and the judgment of the judge?—I should have the names of the witnesses called included.

17,533. And the judgment of the judge?—In the mining districts of Cumberland and the adjoining counties the Sunday papers, particularly one or two of them which seem to report on certain pages nothing else, are widely read, and I should think the effect is very bad indeed.

17,534. Very bad?—It must be. The headlines attract attention, and they are very widely read, and I daresay the papers are bought on that account.

17,535. You would give the judge the power to exclude the names of any witnesses he chose, or, for instance, an innocent party against whom the charge was made. Sometimes witnesses are brought to defend cases which ought not to be brought?—I do not see any objection to that at all. I think that it should be in the power of any court to order that the case be heard in camera if in the discretion of the court it is desirable having regard to the interests of the public that it should be so tried.

17,536. Would you include in that the interest of the children?—Certainly.

17,537. There are many cases possibly in which all publication of any kind or the hearing in public should not take place?—I should alter it to read "in the interest of the children or the public."

17,538. Or the parties, perhaps?—Yes.

17,539. Then what is your next point?—*The Question of Amendments, if any, in the Laws relating to Divorce and Matrimonial Causes, and the Procedure and Practice therein.*—I am in favour of the following alterations:—(a) Adultery of the husband should be a sufficient ground without the necessity of proving in addition cruelty or desertion.

17,540. Do you mean a single act, or continuous adultery?—A single act. I should certainly make a single act a ground, although, dealing with a certain class of people, I am satisfied in many cases that a single act of adultery on the part of a husband would not be taken advantage of by the wife.

17,541. You would leave that to the wife?—Yes. I think the result of the exercise of that discretion would be that it would not be insulated acts that would be brought into court, because the wife has everything to lose and little to gain by proceedings of that kind: Then (b) In suits for judicial separation desertion for six months should be sufficient ground instead of two years. (c) Either husband or wife should be entitled to divorce on the ground of the incurable insanity of the other. The insanity to have existed for two years, and the fact that it is incurable be proved by the oath of not less than three medical witnesses.

17,542. You have not dealt with the question of whether either party should be at liberty to obtain a divorce decree on the ground of malicious desertion

alone?—I am not in favour of that. I think that is one of the "worse" that comes under the category of "for better, for worse." I should say anyone who has to be subjected to treatment of that kind would have to remain subject to it. I should not make it a ground for divorce.

17,543. Have you considered the cases which the witness yesterday. Mr. Barratt, and many others, have put? They have said there is an enormous number of cases of people deserted in this country, where the other party has gone to a Colony; they have not been heard of, and nothing can be proved but the fact that they have gone?—No doubt it would work with very great hardship in some cases; but, on the other hand, desertion is a thing which can be put an end to at any moment.

17,544. Supposing it runs into years?—The husband may come back and be a good husband.

17,545. How would you deal with the class of cases of which I am sorry to say I have seen samples, where the husband has written home and said, "I am doing well in this foreign land, I have a nice house and children. How are you getting on?" I have seen that?—That is a very hard case.

17,546. Would you leave that?—You have to draw a hard and fast line. If you draw a line of any kind I am afraid there are hard cases which must be outside it.

17,547. They have drawn that line for the last three centuries in Scotland by granting divorce for malicious desertion lasting for four years, and they have also done so in other countries?—I have not considered that very carefully, but I can see that it might be done, if sufficient safeguards were adopted, in a perfectly clear case, where it was clear a man had maliciously separated from his wife and committed adultery with someone else.

17,548. That you do not want; that you have now, if you can prove the committal?—Of course.

17,549. You see sufficient of the difficulties?—Yes.

17,550. You think that deserves further consideration. You did not deal with cases of gross cruelty, where the wife's or the husband's life was absolutely unsafe—generally the wife's?—In that case, of course, a wife can apply and obtain a separation. I am not very much in favour of giving absolute divorce for anything apart from adultery.

17,551. And insanity?—And insanity. I think that stands on a different plane entirely.

17,552. Will you tell us, because it has been presented from various aspects, what are the grounds on which you reach the insanity conclusion?—I think divorce ought to be obtained on the ground of insanity. Of course, I refer to incurable insanity, properly proved, probably by an application to the court in the first place, and on inquiry directed by the court. I should not allow the inquiry to be instigated by one of the parties; I think it ought to be instigated officially.

17,553. I want to get at the grounds of your view?—I think it has been suggested by certain witnesses that drunkenness should be a ground for divorce, or an incurable disease of some other character. I do not think there is very much analogy between insanity on the one hand and an ordinary incurable physical disease on the other.

17,554. On what grounds would you justify the insanity decree?—On the ground of necessity. I think it is a right and proper thing. If a wife is married to a man and he becomes affected with insanity which responsible people pronounce to be incurable, with the probability that the man may live to be a very old man and remain in that state of mind, I think that woman is entitled to a divorce.

17,555. In other words, the impossibility of any conjugal life?—Yes.

17,556. Does that not equally apply to desertion where the fact of permanent desertion is established?—What I mean about desertion is this: if it is absolutely permanent, it applies; but, on the other hand, there is always a *locus penitentiae*. Desertion may be put an end to.

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17,557. Would not the same principle apply to cruelty which has made life together impossible?—Again, if that was permanent, but the man's life might be altered and his principles amended, and in the meantime you divorce the parties.

17,558. I wanted your principle, because it is valuable to discuss it in this way. Will you now finish with your proof?—"The questions now being considered by the Commission were briefly discussed by the Carlisle and District Law Society, but no resolutions were passed. The opinions I have expressed are my own, and the conclusions stated I have arrived at after consultation with the district registrar and registrar of the county court of Carlisle who is a solicitor of experience both as an advocate and in the official positions he now holds, and who is the President of the Law Society."

17,559. (Mr. Brierley.) Your suggestion is that the magistrates, in the matter of separation orders, should only have jurisdiction to grant a temporary order for two months?—Yes.

17,560. And then an application should be made to the county court?—Yes.

17,561. You prefer the county court as a tribunal to magistrates for the reason you have given?—Yes.

17,562. Is not that founded a good deal on your statement of fact to the effect that the lowest classes do not take advantage of the Act?—No, I do not think so.

17,563. Assuming the lowest classes take advantage of the Act in large numbers, would it not be putting great difficulties in their way to enact that they must proceed in the county court?—If my suggestion were adopted, that, first of all, any person might apply to the magistrates for an order, say for separation for two months, the lowest classes, or rather higher than the lowest classes, alike would be able to go to the magistrates and make that application.

17,564. At the end of the two months I understand you to suggest if they require protection for a further period, they must apply to the county court?—If they require anything in the nature of permanent separation the county court is the better tribunal.

17,565. Were you influenced in coming to that decision by your view that the lowest classes would not take advantage of it?—No.

17,566. A good many witnesses have said, and it is my experience also, that it is the very poorest classes who as a general rule take advantage of this Act of 1895?—That has not been my experience.

17,567. In Manchester last year in nearly one-fourth of the cases in which summonses were granted the applicants were so poor that the summonses had to be granted free, in very nearly 25 per cent. of the cases?—I find in my experience that that particular class of people are indifferent.

17,568. They are not indifferent to their personal safety, and also they are not indifferent when deserted by their husbands and left absolutely destitute?—They are often so faulty they know their doings will not bear investigation.

17,569. It is not a question of fault so much, but a question of how to live. They want maintenance?—Yes; at the same time if a woman who is very faulty and drinks and does not attend to the house, goes into court, there is very much prejudice, and she does not care to go into court.

17,570. I think the wife wants something from her husband if she can get it. Your experience is different from that of other witnesses with regard to that class?—Manchester is a very different town from Carlisle; it is a very large town.

17,571. (Judge Tindal Atkinson.) Do I understand that you would group certain county court districts and give a special county court judge divorce jurisdiction in that district?—I should give all county court judges divorce jurisdiction. If a man is

appointed a county court judge, in my opinion he is fitted to exercise jurisdiction in these matters. So far as his circuit is concerned, I should allow that county court judge to nominate in his circuits those courts that should exercise this jurisdiction.

17,572. You would apply to any Divorce Act passed the same provision as in the Act of 1903, which enabled the Lord Chancellor by Order in Council to appoint particular centres where the cases could be heard?—That is so.

17,573. It has been suggested that it is desirable in divorce cases that you should have as few minds as possible, so as to avoid a diversity of opinion and diversity of practice. In that case you would divide the country into certain districts and appoint special county court judges to work those particular districts?—I personally do not see any necessity for that. It may be that I do not sufficiently appreciate the difficulty which some people have when they suggest that there might be diversity of treatment and diversity of mind. I cannot see that that argument applies in any stronger way towards matrimonial suits than towards anything else. The issues are often extremely simple and much more simple than county court judges are in the habit of trying.

17,574. We have had evidence that it may be possible to create a very extended system of suing *in forma pauperis*, and to enable the suitors to get to the London court, that the expenses of the witnesses on both sides should be paid by the State, and that solicitors and barristers should be nominated who would undertake to work without payment. As a practical solicitor I should like to ask you a question upon that. Assuming that the State is willing to pay the expenses of the witnesses on both sides, do you think solicitors of any experience would be found who would undertake in the country to get up the cases of the parties and to secure the witnesses and examine them, to prepare the proofs, the brief, and copy the brief, and undertake to see that the witnesses went to London, employ a London agent for the purpose of delivering the brief to counsel and conduct the case in London—do you think in point of practice solicitors would be found to do that?—Paid by whom?

17,575. By nobody—for nothing?—I think, in answer to your question, there would be very few solicitors disposed to do it, and any who would be disposed to do it would certainly be solicitors of very little experience. Those who were disposed to do it from the point of view of humanity—there might be some—certainly would not have the time—the experienced ones—and the result would be if any solicitor did that, probably he would be a man of very little experience.

17,576. Do you think that would not be a practical suggestion, and a way out of the difficulty of poor people getting relief?—Not at all practical.

17,577. I do not know whether it is within your experience—I attach considerable importance to it—that under the present system, by reason of which county courts have not divorce jurisdiction, and no power over the custody of children, considerable mischief and injustice is done through children not being able to be removed from an atmosphere in which they ought not to be living?—That is so, undoubtedly.

17,578. Would that be very considerably removed if you gave county court judges divorce jurisdiction?—Undoubtedly. Of course, magistrates at the present time have jurisdiction with regard to the custody of children in applications under that Act.

17,579. That is only under separation orders?—Yes.

(Chairman.) We thank you very much for your evidence, which has been most thoughtful and of great value to the Commission.

Mr. FRANK ROWLAND called and examined.

17,580. (Chairman.) Are you a solicitor in practice at Accrington in Lancashire?—Yes.

17,581. That is your principal headquarters?—No. My principal place is at Manchester, but I have a

different class of business there. That is why I speak of Accrington, because my evidence mainly applies to Accrington.

17,582. You put it thus in regard to Accrington,

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that you have to deal almost entirely with the raw material as opposed to the finished article which appears in matrimonial cases in the witness-box?—Yes.

17,583. I should like you to express your opinion to us?—I am emphatically of the opinion that there is an immense amount of untold misery in many so-called homes of the working classes in Lancashire owing to the fact that because of the lack of means it is at present absolutely impossible that advantage can be taken of the Divorce Court procedure, which, owing to the expense attendant thereto, is entirely out of the reach of the majority of the working classes.

17,584. Have you had a very large experience of this class of case?—I have

17,585. Before magistrates?—Yes.

17,586. And also divorce cases?—Yes.

17,587. We have been told by some witnesses that there is little demand, if any, amongst the poor classes for divorce jurisdiction within their reach. What do you say about that?—In my experience there is a demand, undoubtedly.

17,588. Do you think it would be utilised largely if there were an opportunity?—I think it would. I think there is a crying need for it.

17,589. Perhaps the shortest way will be to state it from your proof?—Yes. It is almost a daily occurrence for both husbands and wives to consult me with a view of obtaining an order under the Summary Jurisdiction (Married Women) Act from the local magistrates on the ground of the misconduct of the other partner of the marriage. In none of these cases can the innocent party obtain relief from the magistrates except in the form of a separation order, and then only when something further than mere marital misconduct can be proved, *i.e.*, habitual drunkenness, persistent cruelty, desertion or neglect to maintain, or the like; of course, there is assault. The practical result, as opposed to the theoretical, is that the hitherto innocent party, after finding divorce a financial impossibility, seldom leads the immaculate life he or she has hitherto done, with a result that the children themselves are contaminated and themselves follow in the same direction in which the parents have gone.

17,590. Then you give a typical case?—Yes. I was consulted some years ago by a woman whose husband had for years carried on continuous illicit intercourse with no less than three women. She acquired from him a venereal disease which necessitated her treatment at the hands of a local medical man, and when she charged her husband with having communicated the disease to her, he at once left her and took up his abode with one of the women with whom he had been friendly hitherto. In the irritation of the moment she had verbally agreed with her husband to accept a nominal sum per week, but finding this sum totally inadequate to support herself and the four children of the marriage, she desired to obtain further maintenance from her husband by means of an order from the magistrates. I personally attempted to obtain a reconciliation between the parties, but the husband, having made several payments, evidently considered that he had made a good bargain and absolutely refused to move at all in the matter. Some months passed, and then the wife again consulted me as to whether she could re-marry. It appeared that she had met a very decent young man of the working class who desired to marry her. I advised her that she must in the first instance obtain a divorce from her husband on proof of adultery and cruelty, or the like, and that the costs would amount to anything from 25*l.* to 30*l.* even if the case were undefended, the reason being that I should have to engage a London solicitor to act as my agent to carry on the necessary proceedings in the principal registry, and counsel would have to be engaged and paid to present the case, and also her attendance with witnesses on the trial in London would be essential. This sum appeared entirely out of the question, but I know that for some time she endeavoured to save whatever she could out of her weekly allowance and out of her own earnings acquired from odd days' employment as a washerwoman. About 18 months afterwards the woman came to me with the young man and said that they had decided to give up the struggle to

save up the money for the divorce, and had decided to follow her husband's example and are now living in open adultery together. The present position of that household is as follows:—The four children of the marriage are each of such an age as to be aware of the real relationship between their mother and the man. Another family is being raised up of course, illegitimate; neither the man nor the women, nor any of the children go to any places of religious worship, but the home itself is clean and tidy. On the other hand, the husband is now living with the last of the series of paramours, each of whom either contribute to the disease the man is suffering from or it has been communicated to them, and so far as I am aware none of these women have had issue. I am most strongly of the opinion that that man is not only a curse to himself, but a positive danger to the community at large, and I am most emphatically of the opinion that the law should be so altered, if possible, that, in the interest of public morality and decency, the woman who is a wife in the eyes of the church and the law should even now be granted a divorce from her husband, and, further, by so doing, the decree should legitimatise the children of the later union. Then I have another typical case. Six or seven years ago another woman consulted me, whose husband had left her and was living in open adultery with a woman who had left her own husband in consequence of conduct on his part which resulted in innumerable convictions for indecent offences, namely, exposure of the person. The woman who consulted me desired a divorce. Her husband was an idle, worthless fellow who did not contribute to her support, nor, in fact, was he in a position to do so. I told her that I could do nothing until she brought me 25*l.*, and she left me with the idea of saving up until she acquired this money. Some three years ago she came to me, having received some money under a policy of insurance, and a petition was presented and a decree nisi granted by your Lordship.

17,591. She had enough to do it?—She obtained the money under a policy of insurance.

(Mr. Brierley.) After about three years.

17,592. (Chairman.) The longest case I have known was 20 years, as I have already stated?—It appeared that after her husband first left her, she, having no means of livelihood, had taken a position of house-keeper to a widower who kept a public-house, and he had a daughter growing up. After his death, the daughter of the deceased appeared to have considered that she was entitled to some portion of the insurance money, which my client had received; with the result that the local solicitor for the King's Proctor, on making inquiries before the decree was made absolute, went to her, and she, apparently in a spirit of malice, gave a proof to him that my client had committed adultery repeatedly with her deceased father. Having acquired this information, the King's Proctor intervened. My client had exhausted all her means and could not defend the intervention in London, with the result that not only was the decree annulled, but the King's Proctor subsequently issued execution for his costs, and the woman's goods were actually sold, lock, stock, and barrel, and she was thrown into the street. The above instances are typical examples of the practical effect of the present administration of the divorce laws in Lancashire, and it is the local solicitor who comes into contact more particularly with the disadvantages of the present system.

17,593. Did you hear or read the evidence given yesterday by the witnesses who spoke for a large body of the mothers of the country being opposed to any idea of divorce?—I did read it.

17,594. Would your view be that was really consistent with the state of facts that exists amongst those who meet with these troubles?—I do not think it is at all.

17,595. Is it consistent with your views about those who are respectable, and so forth?—Quite so.

17,596. I gather you take the view that there are numerous cases which would be left in a state of hardship and productive of immorality unless they can get their proper release on adequate lines?—Undoubtedly.

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[Continued.]

17,597. You have given us two typical instances which are very remarkable. When you say they are "typical," to what extent in your experience do those cases speak for a larger number of persons?—I have chosen those instances out of a great number. Those are strong cases, I admit; I chose them for that purpose; but there are dozens of other cases almost on identically the same lines. I can give one more which might be of use to you. A man living at present was left six years ago by his wife, who went to live in adultery with another man. That man was a labourer earning 18s. to 1l. a week. He could not both work at his work and work at his home, and he had to do the best he could, and he relied upon the eldest girl, a girl about 11 or 12, to do the house work. She is now a prostitute. He could not look after her during the day-time. The younger daughter is now a prostitute. The three other children are boys. One boy was sent to a reformatory by the local magistrates recently, and is now in the reformatory. The other two are at present, I believe, awaiting their trial as youthful offenders. That has simply and purely come about, in my opinion, because the man could not re-marry, and could not have a woman to look after the children, although he did his best, and he even washed the bed linen, I believe. He did whatever he could, but he really could not look after the children as well as working. He only missed three days' work in six years. I have those facts from the Chief Constable of Accrington, who personally investigated the case for me.

17,598. That leads to another point we have not had mentioned, where those cases of the wife going are concerned; unless the man can re-marry, if he has children he has only two alternatives: one is to leave them to get into the troubles you have mentioned, and the other is to take a housekeeper or someone to look after him?—Yes.

17,599. I suppose experience would lead you to say, from what you have been telling us, that that housekeeper would live with him in an immoral way?—I am afraid it would be inevitable, because a man with 18s. a week cannot afford a house with more than four rooms, two up and two down.

17,600. It all arises in that class of life from the fact that the poor man who is left must have someone to look after the home, and if he cannot do it legitimately he does it illegitimately. Do you think that prevails to a large extent?—In my experience I should say to a great extent.

17,601. Will you kindly proceed with your proof: it is very interesting?—I have read some of the suggestions placed before the Commission, but many of these have their practical disadvantages, patent to the solicitors in the country. First, with regard to the county court jurisdiction suggested with respect to divorce, as a result of the extended jurisdiction of the county court—and I add, together with an increasing population in large industrial centres, because Circuit No. 4, to which I am going to refer, contains no fewer than 1,000,000 inhabitants with one judge to look after them—the judge, at any rate of this Circuit No. 4, is most tremendously overworked, and it is not exaggerating to say that the work of the present judge is three-fold that of the late judge who acted under the former more limited jurisdiction. It is amply clear to any solicitor in active practice in the county courts of Lancashire that the work of the county court judges will have to be considerably diminished in the future instead of being increased. On the other hand, this is a manifest misfortune, because the learned county court judges, before whom I have had the honour to appear as advocate are eminently suited to administer the law in matrimonial cases, because their intimate experience with the working classes day by day in their various courts renders them peculiarly fitted to understand the lives of the people and the motives by which they are actuated and the consequent results. I have heard it suggested that if jurisdiction were given to the county court, and consequently 50 or more tribunals each dealing with divorce, there would be 50 opinions as to whether the evidence were strong enough to justify the granting of a decree.

I cannot think that this is a serious suggestion, because there are already a far greater number of tribunals each trying every day questions of commercial import and even of matrimonial consequence. I may add here that each judge at any rate acts upon similar principles. Every bench of magistrates in the country is being asked continually its views as to whether evidence of persistent cruelty is sufficiently strong to enable them to grant an order to the woman applying or to the man who claims that his wife is a habitual drunkard, and inviting the opinion of less learned and less critical judgment than that of county court judges. As to the suggestion to invest the magistrates with powers in divorce, I say this has no practical value. No doubt those cities or county boroughs which have the advantages of the services of a stipendiary magistrate might be differentiated, but I understand their time is quite fully occupied with the present volume of work, and the hundreds of lay benches of magistrates in the other districts could not safely be entrusted with work of this importance.

17,602. Have you had experience before the lay magistrates in these cases?—Yes.

17,603. What is your view?—It is rather a difficult question to answer. I should say that they do their best. It really becomes a question of this kind: any question which involves a legal question is really a decision by the magistrates' clerk. Questions of fact no doubt are decided by them.

17,604. Now will you make your suggestions?—Yes, always subject to this—I am taking the county court jurisdiction as it at present stands, and I merely suggest from that standpoint—I would form in local areas Divorce Court district registries in which proceedings could be taken; the registrar of each of which should have power to hold courts in various towns of his circuit on certain fixed days, and he should have power to take evidence in chief, and the witnesses could then be cross-examined and re-examined in the ordinary way, and to save expense, to give solicitors the right of audience. The registrar would then, at the conclusion of the case, transmit the original depositions with the necessary copies, together with a report on the case, to the principal registry in London, where the papers would receive the consideration of a divorce judge in chambers, who in his discretion could notify the district registrar that no case had been made out, and the registrar would then notify the parties, or, if he were of the opinion that a case had been made out, a copy of the depositions and report would then be sent to the King's Proctor to make inquiries, and unless before the expiration of the ensuing three months the King's Proctor intervened, the decree would be made absolute. Should the King's Proctor think it necessary to intervene within this last three months the trial should not necessarily take place in London, but a list could be made up of sufficient size to warrant the journey of a divorce judge at the time of the local assizes, when those cases could be disposed of. There may be disadvantages about this system, but, assuming efficient practical men are chosen as registrars qualified to take depositions properly, the necessity for the expense of a trial in London would be dispensed with. With regard to cases which were not of working-class type, parties who desired to have their cases tried in London could, on giving security for the costs of the other side, dispense with the local jurisdiction, and the trial could proceed as at present constituted. I would immediately dispense with separation orders, as these, in my experience, have been found to be a curse to the district, and to be largely conducive to immorality. A register of divorced persons should be kept at the district divorce registries, which would give the bare particulars of the results of the cases, showing persons who had been divorced, and these particulars only should be divulged to the newspapers. The grounds of divorce should, in my opinion, be altered, namely, that misconduct of either party to the marriage should be a ground of divorce, and also conviction for any serious criminal offence should entitle the other party to petition, as also habitual drunkenness. This would not mean that the consequence of a conviction would necessitate the loss of the other partner, but it would

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give the other partner a right to obtain relief if he or she so desired it.

17,605. You have said nothing about gross cruelty, desertion, and insanity?—Gross cruelty, I should take it, would be considered a serious criminal offence.

17,606. And desertion?—Desertion, I think, ought to be a ground for divorce after consideration.

17,607. After some time?—Yes. "Malicious desertion," I believe, is the term you use.

17,608. "Malicious" really means wilful, against the consent of the other party?—Yes. The question of insanity I cannot make up my mind upon. I have examples both ways, and a very dear friend of mine is suffering at the present moment in a similar case, but I prefer not to express an opinion.

17,609. Then your last point?—There should be power of the court to order, in any or every case, the guilty partner to contribute to the maintenance of any children of the marriage so dissolved.

17,610. And to the wife too, I take it?—Yes.

17,611. Possibly even if she re-marries?—Yes.

17,612. (Judge Tindal Atkinson.) You say your circuit is No. 4?—Yes.

17,613. And it is congested?—Very congested indeed.

17,614. You think on Circuit No. 4, without assistance, the judge could not take the additional work of divorce?—It would be absolutely impossible for him.

17,615. What would you suggest should be done in reference to divorce cases that occurred within Circuit No. 4?—I would re-arrange the whole county court system. I think that the judge ought to have the assistance of a junior judge. The senior judge of that particular circuit should have certain fixed days for sitting in certain large industrial centres, and he would then take the heavier actions; and the county court work proper, which was contemplated by the original Act, that is, the poor man's court, should be taken to the door of the poor people by the junior

judge, who would go on circuit to the various smaller towns.

17,616. Supposing that could not be carried out, there is the matter of the difficulty of increased expenditure. Circuit No. 4 could not possibly undertake the work. You would have to leave the persons in Circuit No. 4 not able to go to the county court at all?—I do not admit for a moment that it is impossible on account of the expenditure. The county courts, at any rate in Lancashire, are large money-making machines by which the Treasury undoubtedly benefit, and that money ought to be expended in our own circuits.

17,617. Do you know how many days your judge sits in the year?—I could not tell you.

17,618. Did he sit more days in 1909 than in 1908?—I did not anticipate your questions; I really could not tell you.

17,619. I have not got the returns. I cannot tell you. With reference to the suggestion of suing *in formâ pauperis*, so that the parties could get into London, may I take it it would be a good thing if it could be done, in order that suitors should have their cases tried in the High Court by High Court judges? Do you think that local solicitors of any position and knowledge would undertake the necessary work connected with divorce for nothing?—No; they could not afford to do so. They have not the time to do it.

17,620. Would the London agents, if the country solicitors would do it for nothing, undertake to do such work for nothing?—I do not think they would consider it for a moment, and I would not even ask them. We require specially competent men to act as our London solicitors. I think if the county courts were abolished and district courts of the High Court were formed, that then the reorganised county court could deal with the matter of divorce quite properly and efficiently. That would be the ideal court, in my opinion.

(Chairman.) Your evidence has been of great service to the Commission, and we thank you very much for it.

Mr. EDWIN LAVERACK called and examined.

17,621. (Chairman.) You are a solicitor, and were the town clerk of Hull?—I am now, and have been for 13 years.

17,622. I thought you had retired?—I retire at the end of this month.

17,623. Prior to your appointment as town clerk of Hull, which was in 1897, 13 years ago, you were in private practice in Hull for over 25 years?—Yes.

17,624. Did your practice consist chiefly of a contentious character and largely in the local courts and amongst the working and lower middle classes?—Chiefly of a litigious kind.

17,625. Have you had considerable experience in Divorce Court practice?—A large experience.

17,626. Many of them being undefended cases?—Both defended and undefended; largely undefended.

17,627. In which it would be a mere question of formal proof?—Yes.

17,628. We know that formal proof takes very few minutes?—Yes.

17,629. Did you find by experience what the cost of those cases was?—Yes. My experience was that the cost of an undefended case was 35*l.* to 45*l.*

17,630. There seems to be a pretty fair unanimity about that?—Yes.

17,631. The great majority of cases in which you were consulted were cases of poor persons who wished to obtain a divorce, and in which the misconduct was not disputed—there could be no defence?—Yes.

17,632. Why was it you could not bring those cases to court?—Because they could not afford it. The cases I had undefended were a mere percentage of those I should have had if the parties could have afforded the procedure.

17,633. You would have a court in Hull?—Yes. If we had a court in Hull the number would have been very largely increased.

17,634. With this experience of many years are you able to tell us whether you think there is a real demand among the poor people or not?—I am quite certain

that there is a large demand. My experience soon convinced me, first, that there was a very large number of persons who are anxious to obtain divorce and entitled to it, but who could not afford the cost; and, secondly, that if the relief which the Divorce Act was intended to give was to be available for such persons, it was absolutely necessary that jurisdiction should be conferred on local courts.

17,635. You say in your proof that in a comparatively few instances the parties were able after a time, by saving part of the money and borrowing the remainder to take the case into court and obtain a decree?—Sometimes after years. Then we had to explain the delay, which we did satisfactorily.

17,636. You mean you had to explain the delay to the court?—Yes—want of means.

17,637. You say in one case in which you were concerned, proceedings *in formâ pauperis* were commenced, but as this procedure only saved the court fees, which would have reduced the cost by a small amount, the petitioner was unable to go on?—Yes.

17,638. Will you kindly proceed to read your proof upon that point?—I have long considered it a reproach to our system of judicature that divorce jurisdiction has not been conferred on local courts, and I am satisfied that the non-existence of such jurisdiction is a great hardship and a denial of justice to the poorer classes, and that the Divorce Act might just as well not have been passed so far as they are concerned.

17,639. You would confer jurisdiction on the county courts?—Yes.

17,640. You think if that was done and a simple procedure adopted, an undefended case should not cost more than 6*l.* or 7*l.*, and a defended case 10*l.* or 12*l.*?—Yes. I do not see why it should not be done for that amount.

17,641. That would be within the reach of the people you are speaking of, possibly?—Quite. If the relief could be obtained for anything like that amount

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a very large number would have taken proceedings and obtained divorce.

17,642. One other question upon your experience. What has happened to those people who could not get it for the reason you have mentioned?—Very largely they have gone to live together.

17,643. Do you mean the two parties to the marriage?—What I mean is this. In many cases in which I was consulted it was sometime after the misconduct and the innocent party found an opportunity of marrying again. He or she was unable to obtain a divorce, and they simply went and cohabited together.

17,644. You would give the county court concurrent jurisdiction, so that there should be power to remove into the Divorce Division on application by a respondent or co-respondent, and on sufficient grounds being shown for such removal?—Yes.

17,645. You say it should be sufficient ground if, in a defended case damages exceeding 100*l.* were being claimed, and also if in any cases it were shown that the means of the petitioner were sufficient to enable him to proceed in the High Court?—Yes.

17,646. That means unlimited jurisdiction, with the power of removal?—Yes.

17,647. What do you say about the capacity of the county courts to exercise this jurisdiction?—I think it is a libel on those courts to suggest that they are not capable of exercising divorce jurisdiction efficiently.

17,648. Some witnesses have suggested the poor would resent being sent to them?—I do not think so for a moment. It is their court essentially.

17,649. You express the view that the inability of the poor to obtain a divorce tends to immorality and increases the illegitimate birth rate?—I speak from personal knowledge and experience with regard to that. In a large number of cases I am quite satisfied that the parties simply went and lived together.

17,650. Do you think giving local jurisdiction would have the effect of increasing the number of cases of collusion?—No.

17,651. Will you say why?—I do not see why it should.

17,652. You think the King's Proctor's duties could still be adequately performed?—I do, even more efficiently, if I may so, by the registrar and his officials, who know the people.

17,653. As to separation orders, would you leave them to the magistrates as at present, or transfer them to the county court?—With regard to separation orders perhaps I should say the Act of 1895 was passed just before I went out of private practice,

therefore I have had very little experience under that Act, and perhaps as I have had no experience I ought not to venture an opinion upon it.

17,654. Then I do not think it is necessary to trouble you about that. With regard to the grounds of divorce, do you say they should be the same for husband and wife?—I certainly think so.

17,655. What do you say with regard to the question of lunacy?—I think when a man is pronounced incurable he is practically dead, and therefore I would give the wife a divorce.

17,656. You have not said anything about desertion and cruelty?—I think long-continued desertion should certainly entitle a wife to divorce.

17,657. And cruelty?—I think persistent cruelty should, also.

17,658. I think you deal with the question of crime?—Upon that I would rather say nothing. I have considered that point carefully since I prepared my proof, and I think I would rather leave that question. I do not feel I can pronounce an opinion worth having upon that.

17,659. With regard to the publication of divorce cases, what is the view you hold upon that point?—My view is that the simple result should be published for the information of the world, with no details.

17,660. Do you think it does in fact produce a deterrent effect at present?—I do not think it does produce any deterrent effect, or very little. On the other hand, I think the publication of the details in the newspaper tends to corrupt.

17,661. Have you had any specific instances brought to your attention?—I can only say this, that when there is a divorce case on which, as one of the witnesses said, contained spicy details, there is a big run upon the particular paper that publishes it in great detail.

17,662. Do you think cases should be heard *in camera*?—I should give discretion to the judge.

17,663. (*Judge Tindal Atkinson.*) Did you hear the questions I asked the last witness with regard to parties suing *in formâ pauperis* and coming up to London?—Yes.

17,664. Are you of opinion that solicitors in the country could be found who would do all that work for nothing?—I am of opinion that they could not, and really I do not see why they should. If the jurisdiction was conferred upon the county courts there would be no necessity for it. That is my opinion.

(*Chairman.*) We wish to thank you very much for your evidence, which has been of assistance and value to us.

Mr. FREDERICK WILLIAMS MORGAN called and examined.

17,665. (*Chairman.*) You are a solicitor practising at Hastings and the surrounding district since 1888?—Yes.

17,666. Have you frequently acted professionally for husbands and wives in matrimonial difficulties?—I have.

17,667. Have you been engaged on one side or the other in, probably, 40 cases under the Summary Jurisdiction (Married Women) Act, 1895?—Yes.

17,668. And 60 cases you have had in which the parties have not taken proceedings?—Yes.

17,669. You have occasional cases of divorce in the High Court?—Very seldom in the High Court.

17,670. Is there much of this class of business in Hastings?—Not a great deal.

17,671. It is a popular seaside resort?—A town of 65,000 inhabitants, but there is not a great deal of matrimonial business.

17,672. You have not to do there with such an extensive working class as in the manufacturing districts?—No, it is a comparatively small working class. Of course there is a considerable agricultural population within the radius of 5 or 10 miles.

17,673. Will you just give us the result of your experience?—I have found that in a large proportion of the above cases the antipathy which had grown up between the parties made it practically impossible that they should live together. That antipathy often re-

sulted in assaults and threats. The evil of compelling them to live together appeared generally greater than that of separating them. Allegations of adultery were frequent, but could only be investigated apart from High Court cases, where a husband opposed, or sought the discharge of, a separation order on that ground. I have found that although there were strong suspicions that these allegations were true the evidence obtained generally fell short of proof of them; the evidence suggested that careful watching would probably have resulted in proof being obtained, but lack of means prevented this. Most of the husbands in the cases which have come before my notice were working men, or men in a small way of business. As a rule, they could not by selling all they had have raised 20*l.*, and frequently not 10*l.* The wives generally had no separate means and could not afford more than a guinea fee to a solicitor (often borrowed from friends) and a few shillings for witnesses' expenses. In order that they should get relief under the above or any similar Act it would be essential, as a rule, that the proceedings should take place in their own locality and on a certain day. Courts of summary jurisdiction give both these requisites. They can almost always dispose of such cases without adjournment. County courts though providing for trials in the parties' own locality are by reason of the greater amount of business to be dealt with and of the fact that the judge has to travel con-

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[Continued.]

siderable distances not always certain as to the actual day of trial. Moreover, they sit much less frequently than courts of summary jurisdiction. For the above reasons I think it would be well not to diminish the jurisdiction of courts of summary jurisdiction. Unless jurisdiction to try cases of divorce *à vinculo* is given either to county courts or to courts of summary jurisdiction divorce is entirely beyond the reach of almost all of the classes of people for whom I have acted. Their means are too small to allow of their seeking it either in the Divorce Division or at the assizes. In counties so near London as my own a trial in London would be generally more convenient than an assize trial. I often attend the Lewes Assizes and I find that the duration of criminal business is very uncertain, and an attendance of two or three days is often necessary where a criminal case has to be fought out. This is so notwithstanding that the arrangement of business is very good. The necessity of taking a number of witnesses to the assizes for several days, pending completion of criminal business, would cause so much expense that a divorce trial at assizes would be beyond the reach of the classes I have mentioned. So also would a trial in London. In either case, besides witnesses' expenses, counsel's fees and solicitors' costs for both sides and court fees would have to be provided as a rule by the husband. I may add that if it were possible to pass an Act enabling people who were necessitous to be provided with the services of counsel and solicitor and witnesses' expenses at the public expense, I should prefer a trial in the Divorce Court in London; but if such an Act were passed it would probably lead to an enormous addition to the work of the Divorce Court and a considerable increase in the number of judges necessary to deal with the work. If jurisdiction to grant a divorce *à vinculo* were given to county courts or courts of summary jurisdiction, I think either party should be entitled, if he or she wished, to the safeguard of a jury in the former and of a unanimous or almost unanimous decision by several magistrates being necessary in the other. A divorce by a 2-to-1 vote or 3-to-2 vote would be objectionable.

17,674. Is that the position of things with regard to separation orders, that it is taken by vote?—Yes

17,675. Without reasons given?—No reasons given.

17,676. Do not the magistrates, under the direction of the Divorce Court which is an appellant court, give reasons for their decisions. It has been indicated over and over again that they ought to?—They simply say they find the case has been proved, and grant a separation. I think that is one of the weakest points in the present procedure. It really amounts to this, that it is a matter of accident in some cases whether a person gets a separation order or not. It depends on the actual constitution of the bench on the day the case is actually dealt with. If divorce jurisdiction were conferred on courts of summary jurisdiction I should say that it would be highly objectionable that a divorce should be granted by such a vote as I have mentioned. I think also that even in the case of a trained judge it is placing an enormous amount of power in his hands to allow him to take such a step as dissolve a marriage without giving the parties the opportunity of demanding a jury. The strong antipathy to divorce among the members of certain churches would, I think, make it desirable to enable a party to have a jury in the county courts, so that a judge who strongly disliked divorce should not, by requiring too much evidence, withhold the remedy.

17,677. A judge is supposed to have no opinion except legal views?—I am afraid the opinion does creep out sometimes.

17,678. You think the ideal is not always realised?—Not always. I think that justices might be entrusted with divorce jurisdiction if they were required to be five in number and unanimous, or, perhaps, three in number and unanimous. I think the county courts might be entrusted with it, if either party might require a jury. If the choice were between a county court judge sitting alone and justices deciding by a bare majority, I should much prefer the former. If jurisdiction were conferred on the county courts I

think the employment of counsel should be at the option of the party. Although counsel, as a class, are, of course, better advocates and lawyers than solicitors as a class, the same cannot be always said of counsel and solicitors individually. The party should decide according to his means and his knowledge of the solicitors. I cannot suggest any limitation of the classes to whom divorce in inferior courts should be permitted, based upon means, except, perhaps, that a divorce case should be tried in an inferior court only where the joint income of husband and wife, after deducting 20*l.* a year per dependent child, should not exceed 120*l.* I should prefer, however, that the divorce jurisdiction should be available in the inferior court to all with a right of removal to the Divorce Division where the income exceeded the above figure, or where the court thought it advisable, for other circumstances, that there should be a removal. In courts of summary jurisdiction the danger of collusion would be substantial, but the necessity for a unanimous decision would be a safeguard. The necessity of watching for collusion should be brought before justices and their clerks by the Home Office at intervals. On the question of collusion, it seems to me that a very valuable safeguard against collusion exists in the police force. I think if the duty were imposed upon the police force to attend any local courts which were trying divorce cases and to report to the King's Proctor, and assist the King's Proctor in any investigations, there would be a very considerable safeguard against collusion, because the head of the police in each district has at his call the services of the individual constables, and the police have excellent opportunities of knowing the habits of life of the people amongst whom they move. The procedure in inferior courts should be simple both in divorce and in separation cases. I have found it difficult to meet charges of persistent cruelty owing to the wife not having to give beforehand any dates or other particulars; the result has been that I have had to conduct a roving inquiry over the husband's life for some years in order to be prepared for any allegations made; as justices often decide on the wife's evidence uncorroborated by third parties, the opportunity of demolishing an unexpected false charge must often be wanting.

17,679. Is that really so? As a general rule, in the Divorce Court even, on cruelty the court will not act without corroboration?—In my experience they often act after hearing the evidence of the two parties alone. Justices will not allow an adjournment to a husband after his wife has given evidence to enable him to instruct his advisers unless in exceptional cases, *e.g.*, where some suspicion is cast on a wife's evidence which a third party might confirm or remove. In cases of adultery, dates and particulars should be furnished a substantial time before trial. If divorce jurisdiction were conferred on an inferior court jurisdiction to grant a separation for adultery should, I think, be given to that court. I am speaking of separation as distinct from divorce. If, therefore, jurisdiction were conferred only on county courts, they, and not courts of summary jurisdiction, should grant separations for adultery. In any event, I think the latter courts should retain all their present jurisdiction. A blot on the practice in all justices cases, which is of considerable importance in cases of importance, is that the complainant's solicitor or counsel is not allowed to address the court after the defendant's evidence has been given. He simply opens the case and calls his witnesses, and then the case for the defence is opened, and there is no speech in reply.

17,680. Is that not allowed by any rule, or what is the practice?—It is the universal practice.

(Mr. Brierley.) It is under the Summary Jurisdiction Act.

(Chairman.) The Summary Jurisdiction Act does not apply to the hearing of these cases.

(Mr. Brierley.) Yes, the practice of the Summary Jurisdiction Act is applied to these cases.

17,681. (Chairman.) I thought that was only*for the enforcing of the orders. I should like to see that, for my impression is the contrary. I thought the practice of the Summary Jurisdiction Act only applied

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to the enforcing of the Orders.—I think it applies entirely.

17,682. With deference, I do not think so. My recollection of the Act is not certain at the moment, but I think it is so.

(Mr. Brierley.) Section 8 says, "All applications under this Act shall be made in accordance with the "Summary Jurisdiction Act."

(Chairman.) That is the form of making the application; that is not the hearing of the case.

(Mr. Brierley.) I rather fancy a reply is allowed.

(Chairman.) You allow it?

(Mr. Brierley.) Yes.

(Witness.) They never allow it in my neighbourhood.

17,683. (Chairman.) Have you found that works injustice?—Yes, because I have gone into court, and after opening my case I have had a case sprung upon me by the defence, and I have no opportunity of criticising either the defence or the witnesses.

17,684. You should take the point and bring it to the Court of Appeal?—As a rule in these cases the parties cannot afford the expense.

17,685. You would have to be public-spirited enough to bring it up. I think at present that is not a right practice in principle. I should doubt whether it was at all a correct practice according to the Act?—The result of that is that the solicitor for the complainant—

17,686. The result is obvious to anybody who knows anything about the court. There is a little further memorandum you have sent which I have not had an opportunity of reading?—I have embodied that in what I have said.

17,687. Then we need not go through that?—No.

17,688. (Judge Tindal Atkinson.) Do you agree with the last witnesses that competent solicitors would not undertake this work for nothing?—I agree with them.

17,689. The poorer classes could not get a solicitor to undertake this work for nothing at all?—No. There would be this result, that inasmuch as there are not many solicitors in some parts of the country taking up advocacy, those solicitors would have a very large number of those cases put upon them, and for that reason I do not think solicitors would undertake to deal with these cases *in formâ pauperis*. If it was a casual case it could be arranged, but the number would be too large.

17,690. (Chairman.) You have been good enough to volunteer your evidence in order to assist us in this inquiry?—Yes.

17,691. You were not communicated with?—No.

(Chairman.) We thank you very much for your assistance in calling attention to one or two points which I think it will be undoubtedly desirable to consider.

Adjourned.

Winchester House, St. James's Square, London, S.W.

TWENTY-SEVENTH DAY.

Monday, 13th June 1910.

PRESENT.

THE RIGHT HON. LORD GORELL (Chairman).

His Grace The LORD ARCHBISHOP OF YORK.
The Right Hon. The EARL OF DERBY, G.C.V.O.,
C.B.
The LADY FRANCES BALFOUR.
The Hon. Lord GUTHRIE.
Sir WILLIAM R. ANSON, Bart, M.P.

Sir LEWIS T. DIBDIN, D.C.L.
His Honour Judge TINDAL ATKINSON.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (Secretary).

Mr. THOMAS HOLMES called and examined.

17,692. (Chairman.) I think you are secretary of the Howard Association?—I am.

17,693. Would you just explain what that association is?—It was a society founded about 50 years ago to continue the work of John Howard, the prison reformer. Its objects are inculcating the best methods for the treatment and prevention of crime.

17,694. In connection with that object do you have persons who attend at the police courts, so as to follow out what happens to people?—Oh no, we have no agents attending at the police courts at all. It is part of my duty to visit prisons regularly.

17,695. Have you any other duties or work?—I may say I was for 25 years in attendance at the police courts.

17,696. That is what I wanted to get?—Yes.

17,697. In what capacity was that?—As a police court missionary.

17,698. Under the Howard Association?—No, under the Church of England Temperance Society. It is five years ago that I gave up the police court missionary work.

17,699. That was under the —?—The Church of England Temperance Society.

17,700. Now, what would be the function you had to fill at the police court?—I had to attend the police court daily and see the people that were before the magistrates, locked up or charged; to see those people that came to interview the magistrates with regard to their many difficulties, and generally to do what was good for the benefit of the people who came before the court.

17,701. And their families too?—And their families.

17,702. Did that involve making inquiries in their homes and so on?—It involved visiting their homes very frequently.

17,703. Well, that sufficiently indicates to us the work you were engaged upon?—Yes. Let me say, it is the custom at the police courts for the poor specially to attend in large numbers every morning and seek the advice of the magistrates, independently of any charge that there may be against their friends; they come to consult him about their own difficulties.

17,704. Yes, I think we know that; but what you have told us sufficiently indicates the experience you have had?—Yes.

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17,705. During that experience have you found any reason for being able to tell us whether there is any demand, one way or the other, for any increased facilities for divorce amongst the poor?—I have never found the slightest demand for it. I have never been asked in the whole of my life, amongst the thousands of people I have seen personally and whose homes I have visited—I have never been asked about divorce.

17,706. You have never been asked about divorce?—Not at all.

17,707. Have you been asked about separation?—I have, hundreds of times—probably thousands.

17,708. Can you give us any idea what sort of inquiry there was of you?—With regard to the people?

17,709. Yes, I mean on what you have just said, separations; what is the sort of thing they came to you about, or asked you about?—Well, they came and laid before me—they came before the magistrates first, but a great many of them came to my house, and my house became very well known—they came to consult me in all sorts of difficulties.

17,710. I know, but we are only concerned with the matrimonial difficulties. Did they ever consult you about that?—Yes, very largely.

17,711. In what way?—Either for protection or separation.

17,712. What were the general grounds put forward for separation?—Drunkenness and brutality and neglect.

17,713. What would be your view as to the opportunity of obtaining divorce among the people you are speaking of?—I think it would be disastrous to give very easy facilities for divorce for the poor. My reason for saying that is this. There is no demand at present, as far as my experience goes; but with the opportunity there probably would come the demand; the facilities would create the demand, and with very disastrous consequences.

17,714. What would be the consequences?—The consequences would be that marriage would be entered into very much more lightly than it is now, and in all conscience it is serious enough now—foolishly. Marriages would be more thoughtlessly entered into than they are now.

17,715. Do you find they are thoughtlessly done now?—Well, the development of the hire system and the extraordinary persuasion that some people bring upon others to get married, does lead to many thoughtless marriages.

17,716. Does your experience enable you to say whether there is much immorality or not among the classes you are speaking of?—Well, my experience of the poor is quite favourable. I do not know much about any other class of society but the poor, and I think the immorality is not greater than might be expected; not so great, indeed, as might be expected, considering the conditions under which they live.

17,717. I am not quite sure that I gather what that is intended to convey?—Well, I mean this. All history shows us that there has been in all ages and in all conditions what we call immorality, and with a congested population, like we have amongst the poor, one would expect to find it prevail to a very large degree. I do not find it prevail to that large degree.

17,718. What district were you working in?—All over North and East London.

17,719. Now you have established an organisation among the women employed in London home industries, the poorest London women workers?—Yes.

17,720. Are those people that consult you about their troubles?—I have 2,000 married women, a good many of them widows, it is true, working in the worst paid industries in London, who are in the society of which I am the organiser. These people look upon me as their friend, and almost their father, I might say.

17,721. I see in your proof you say you have never been consulted on the subject of divorce?—Never, I believe it is utterly foreign to the thoughts of the poor.

17,722. With regard to separation orders, would you tell us what you find is the result of those?—I found when the facilities for separation orders were

increased that the demand for separation increased by geometrical progression; it went up by leaps and bounds. I found all sorts of people for very frivolous things (both husband and wife) sought separations. A good many separation orders were granted, in my judgment, on insufficient ground, and with very sorrowful attendant circumstances. Fortunately, a large number of these people came together again; they found it was not easy to keep up two homes, and after a time (sometimes a very a brief space of time) a large number of them made up their minds to try and live together again.

17,723. I do not quite hear?—I found a great many of those who had foolishly applied for a separation order did see it was better for them to live together again, and a very, very large number of those who have been separated by magistrates' orders have come together again, and perhaps have been the better for a little.

17,724. What was the prevailing influence that brought them together again?—Well I never saw any separation order without feeling very much concerned, and I made them my friends.

17,725. You did your best to reconcile them?—I did.

17,726. And in a large number of cases reconciliation took place?—Yes.

17,727. What happened when they did not get reconciled?—Oh, there, speaking of husbands obtaining separations from their wives, the consequences have been appalling, as far as my experience goes. The power to put a wife who is drunken into the streets with a few shillings in her pocket leads to her certain degradation.

17,728. That is the wife who has the order?—No, the husband who has the order.

(Mr. Brierley.) Under the Licensing Act.

17,729. (Chairman.) You are speaking of under the Licensing Act?—Yes.

17,730. The husband has the order against the wife?—Yes.

17,731. And she has a little support from him?—Yes, about 7s. a week.

17,732. And the result is degrading?—Well, who wants a drunken woman in their house? If the husband will not have her no decent people will.

17,733. What do you say generally happens?—Well, I have found them sleeping in an empty house, and I have found them treading the streets.

17,734. Dead in the streets?—No, walking in the streets homeless. I have found them sleeping in my garden, and I have taken numbers into my own house and let them stop for a time.

17,735. Will you say what is your suggested remedy with regard to the wives in such cases?—I would give no husband a separation order from his wife only as a last resource. First, if her drunkenness is proved there should be a period of probation during which she might have the time to exercise and develop some control over herself, and some amendment might follow. If at the end of that probation there is no improvement in her conduct, then she should be committed to an inebriate reformatory, and the maintenance that the husband pays should go to keep her there.

17,736. Now, take the case where the wife gets the order against the husband; what do you find there?—I find very great difficulty there. The husband may live with his wife until he brings her to the court; I have known them drink with their wives on the way to the court; but if the wife seeks a separation from the husband she has to leave him for a few weeks and take her children with her. Having left him, she gets her summons and her order. A good many of these husbands do not pay the maintenance; some of them are proceeded against; time is given; some of them pay; a good many of them do not pay; and although the wife has relief from the conduct or the presence of the husband, yet very largely she gets no maintenance from him. Consequently you find these poor women—I do, at any rate—working night and day at some of these poorly paid industries.

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17,737. What happens to the man?—The man takes himself off; sometimes he is found; there is a warrant for him; he has not the money; he goes to prison for a month and wipes it all out.

17,738. Do you ever find him living with another woman?—Yes.

17,739. Is that a common matter or is it only occasional?—Well, pretty frequent. I also find the husband, when he has a separation from his wife, frequently lives with another woman.

17,740. That is the case I was asking you about?—Yes, both sides; either where he may be separated on his own choice or on his wife's.

17,741. Now, what is your remedy (if you have one to suggest) for that state of things, which seems rather appalling?—Well, if a man is separated and does not pay the maintenance (a working man—it is impossible for him to live with another woman, have a second family, and contribute to his proper wife), if that man does not pay the maintenance order that is made upon him, I would have no scruple about taking that man and putting him in prison for twelve months and making him work for them. The way they get out of these responsibilities is appalling: a few weeks' imprisonment as a debtor, in which he does nothing and lives a comfortable life. I have known men when arrears have accumulated to come and ask if there is a warrant out against them, as they want to go to prison for a few weeks and wipe them off. The remedy is to find some very stringent method which will absolutely compel the man to make the payment to the wife.

17,742. Send him to work in prison?—That is it.

17,743. What would you do with a man when he is found living with another woman?—If he does not pay his wife the maintenance I should serve him the same.

17,744. Would you leave the parties only separated by an order, or give the wife a ground for divorce?—Undoubtedly there are cases (though I believe there are very few) where a divorce would be preferable, but one has to look at the extent of the question, and be very certain that in trying to do good we do not do a very great deal of harm.

17,745. Now, the next point is with regard to the publication of reports of divorce cases. What view have you formed in your experience upon that?—I think they are disastrous.

17,746. Can you give us any illustration of that?—Well, I travel up to town in the early morning and back in the evening—there are hundreds of young girls going up from Tottenham and the suburban districts to the London offices. I see girls of 16, 17, and 18 years of age, and boys of a similar age, with the halfpenny papers. I know the halfpenny papers have spicy headlines, and I know what it is that attracts them.

17,747. But they have a good deal more news in them than divorce news?—Undoubtedly there is, but some of the papers make a speciality of this.

17,748. You think on the whole publication has a bad effect?—I do.

17,749. Is there any particular class of paper with regard to which you make that observation more especially?—Well, I sometimes look at the Sunday papers, just that I may see, and I know, as far as I see them, that they go in very strongly for that kind of thing. I know the London evening papers also deal largely with them.

17,750. I think I have gathered in what you have already said a good deal of the proof you have been good enough to send. I think most of what follows immediately after you have already covered in what you have said?—Yes.

17,751. You sum it up a little further on in this way with regard to the separation orders: "The present method encourages the immoral and worthless husband to get rid of his wife, but gives no hope or help to the decent husband who wishes his wife well"?—That is quite true.

17,752. And you also add: "The magnitude of this evil may be realised from the fact that after a separation order is granted the man may live an

"immoral life but does his wife no legal wrong, but if she falls he is absolved from any further financial liability on her account. I have sheltered a number of homeless wives, and I know that a number of such women exist"?—Yes, I have known a number of husbands who have been living in immorality themselves applying for an abrogation of the maintenance order against them by their wives.

17,753. You mean if the husband has gone wrong and then knows his wife has gone wrong, he can apply to get rid of the order that his wife has?—Yes; and then I find that that Act is no use at all if the husband has some respect for his wife. I have been consulted by hundreds of husbands who still had some love for their drunken wives, and they could not tolerate the thought of sleeping in a bed themselves and their wives being homeless in the streets. But the husband who does not care a rap, and who longs to get rid of his wife—that Act is an absolute boon to him.

17,754. I think you have covered the probation order suggestion, and also the imprisonment suggestion already; and you continue by saying you think there is sometimes collusion between husband and wife, and the course you suggest would bring this to light. Would you just explain that?—Yes; well things are not always what they seem, and on the flush of things when they come before the magistrates, it looks as if the wife had suffered some very great wrong; she comes perhaps with her bruises upon her, and the order is made sometimes very hurriedly. Afterwards it turns out that the wife, minus the violence, has been as much to blame as the husband.

17,755. And in other cases?—In other cases I have found there has been a wish on the part of both of them to separate on the smallest pretence.

17,756. You go on to proceed with your views: "I believe that jurisdiction in matrimonial cases should by all means be confined to High Courts or police courts"?—Yes.

17,757. Is that to the exclusion of the county courts?—Certainly.

17,758. You think the magistrates have a greater knowledge of the lives of the poor than the county court judges, who deal more with their financial matters?—Infinitely.

17,759. You would prefer to see jurisdiction, if it is given, in the High Court?—Yes.

17,760. And if not, to the police court?—Yes.

17,761. Are you speaking of stipendary police courts or the general police courts in the country?—I am speaking of the stipendary police courts generally, but I have some knowledge of the suburban courts where a bench of magistrates sits, and my remark would hold true with those.

17,762. Then the last item refers to police court marriages. Would you explain a little more fully what you desire to bring to our attention under that head?—Well, my Lord, at different times an epidemic breaks out for arranging these marriages in police courts. Some girl is charged with some crime and a little bit of a sentimental story is told; it is told with spicy headlines, and someone offers to marry the girl.

17,763. Without knowing her at all?—Without knowing her at all. I have received scores of offers of marriage myself for me to hand on to girls charged in our London police courts, whom the writers have never seen and do not know anything about. I have always committed these to the flames; I have never handed one on. But at other courts, on a very small pretext, wicked and foolish girls are hurried into marriage with either thoughtless or wicked men.

17,764. But encouraged by whom?—The magistrates and officials; and the judges of the higher courts sometimes.

17,765. Do you mean without any previous acquaintance or knowledge?—Yes. A few weeks ago there was a case down at Richmond, in Surrey; a girl was charged with robbing her mistress; she was a fast girl; the mistress had taken her as a housemaid, and she had robbed her of a lot of jewellery. She prosecuted the girl and she was dealt with under the Probation Act on condition she went to a home. She was taken to the home and she played all sorts of pranks

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there; she said she would sooner be in prison, and they had to bring her back for judgment. When it appeared in the papers some man wrote and offered her marriage. The offer was conveyed to her; she accepted it. She had never seen him, never seen his portrait; he knew nothing of her. The case was adjourned for a month that that wedding might be consummated. That is in the present year. Sometimes there are numbers of them during the season.

17,766. Is that a typical case, do you mean?—That is a typical case. In our London police courts we have all sorts of men hanging on at the back of the courts. If they see a girl who is a bit passable in looks and young, they are ready to snap her up, either to live with her or exploit her, or to use her for thievery purposes. Again, sometimes in the high courts, when a young fellow has been prosecuted for doing violence to the girl he has walked out with—I have a case in my mind now which is detailed in this book *here*; a young fellow was very jealous, and the girl was afraid of him and she gave him up, and he followed her time after time. At length he cut her throat; he was charged with attempting to murder her; the charge was reduced to one of doing grievous bodily harm; it was not settled in the police court, it went to the High Court. When it was before the judge he asked would she marry the man, because it would make all the difference in his sentence. She said she did not know. There upon the girl was placed the onus of deciding whether that man should be punished for attempting to murder her. The case was adjourned till next sessions that she might consider it. The next sessions they appeared with the marriage certificate, and the judge said, “Now take her away; be good to her; do not assault her again; you have done it before; never let it happen again.” Courts never ought to be used in that way, and those marriages are wicked beyond description. I have seen the consequences of them. The Law Courts—

17,767. (*The Earl of Derby*.) What was the consequence in this case?—Ah, who can tell? He had plenty of time to murder her at his leisure.

17,768. (*Mr. Brierley*.) But you do not know?—No, I do not know, but I have known a charge of murder from such a case. I have known one man.

17,769. (*Chairman*.) You also say here in your proof that the hire system is a bad one?—Well, I do, because it induces young people to get very thoughtlessly married. No working man ought to be married without providing a home free of debt.

17,770. Do you mean you would be in favour of abolishing the hire system altogether?—No, I do not know enough about it.

17,771. What remedy do you suggest?—I do not suggest any remedy, only the inculcation of a higher view of marriage altogether.

17,772. An improving of the standard of morality?—Yes.

17,773. (*Mr. Brierley*.) A word with regard to the order obtained by the husband under the Licensing Act. I agree very dreadful consequences happen sometimes owing to the wife being turned on the world with a very small income, but I understand you do not suggest that the orders should be abolished altogether?—The orders should be the last resource.

17,774. That must be leaving discretion to the magistrate, then. You do not propose to abolish these orders, do you?—Oh, no.

17,775. Now you suggest that the wife should be sent to an inebriates' home?—Yes.

17,776. There is at present power to send her, with her consent?—Yes, but she will not give that consent, and the husband will not send her.

17,777. But you wish that there should be power to send her to the inebriates' home without her consent, and without the husband's consent also?—Yes.

17,778. Could you tell me the average cost of maintaining a woman in an inebriates' home?—At first it was nearly 30s. a week down at Farnfield, and then it was reduced to 22s.

17,779. Is not that prohibitive in a great many cases?—No; because—

17,780. There are a large number of husbands who could not afford to pay 20s. a week for their wives' maintenance. Does not that raise a great difficulty?—This is my point; that we run these inebriates' reformatories—I do not mean inebriates' homes, that are kept going privately—but our inebriates' reformatories are run at the public expense. The large and very beautiful one that the London County Council have down in Surrey is maintained at the Government's expense—the Government capitation allowance—and then the rates from the London district. Women committed to that home are not expected to pay, and do not pay.

17,781. I only wanted to know what you suggest. You suggest really that the State should bear the maintenance, or part of it, of these wives kept there?—Yes.

17,782. That is what it comes to?—Yes.

17,783. I was rather struck by your saying you have never been consulted by either husband or wife on the question of getting a divorce. Do you mean literally never?—I cannot call one to mind.

17,784. Because we have had a good deal of evidence from magistrates and poor man's lawyers to the effect that it is by no means uncommon?—Well, it has not been my experience.

17,785. Have you never had husbands coming and complaining of their wives having been unfaithful to them?—Yes.

17,786. What advice do they come to seek in such a case as that? They know perfectly well that they cannot get a separation for that?—They know.

17,787. What do they come to you for?—Well, more, perhaps, for a little guidance or sympathy, and to see if I might talk to the wives, and that kind of thing; but certainly I have never been asked to help in a divorce.

17,788. But have you never had the question mentioned to you by these husbands?—I do not think so; I cannot call one to mind. I have been going through my memory and my notes over this very carefully, and I cannot find one instance.

17,789. I do not quite see what they come for?—Well, you see people are very strange.

17,790. Well, you think there are certain cases, though you think very few, where probably divorce would be advisable?—Certainly.

17,791. Do you get many cases—I do not mean a police court desertion case, where the husband leaves his wife two or three months and comes back again—but where he has left his wife and disappeared altogether for years and years?—Yes.

17,792. Do you make any suggestion in such a case as that?—I think in a case like that the marriage should be dissolved.

17,793. Only when there is a permanent wilful desertion for years?—Yes, I think so.

17,794. (*Judge Tindal Atkinson*.) I do not know whether I understand you that you are opposed to facilities being given to the poorer classes to get into the Divorce Court. At present it is pretty clear that they cannot?—Yes.

17,795. Do you oppose those facilities, or is it your opinion that it is not expedient that they should be given?—I oppose the facilities on a very large ground; because I believe giving the facilities would create a demand which at present does not exist.

17,796. You say create a demand, but divorce would not be granted unless there were grounds for granting a divorce?—Well, but if you make the grounds very small you make the divorce easy to get.

17,797. But there would have to be the facts for it to be granted on?—They might easily produce those facts.

17,798. You mean deceive the court?—No, I mean this, that it is my candid conviction that the extension of easy divorce facilities would lead to a great deal of immorality amongst the poor which would establish grounds for a divorce.

17,799. We have had some cases put before us where men drive their wives to prostitution for the purpose of living on the proceeds?—Yes.

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17,800. Should those women have no relief?—Well, the women are as bad as the men; there is nothing to choose between the men and the women.

17,801. But the woman may be under the compulsion of the husband?—If he marries her, and she is immoral to begin with, I cannot see that there is much to choose between the pair of them.

17,802. Then with regard to the respective jurisdiction of the police courts and the county courts; do you recognise that the police courts would give even greater facilities than the county courts?—Yes.

17,803. Well, you say no facilities should be given, and then you say if facilities are to be given it is better the parties should go to the police courts and to the magistrates than to the county courts?—Yes.

17,804. Does it not occur to you that that would be giving greater facilities to the poor if they could go to the police courts and the magistrates instead of to the county court?—Well, you see, the magistrates have a very varied experience of humanity which the county court judge does not get. All the troubles and vicissitudes of life come before him. If you establish divorce at the county court, to which some people now come purely for financial questions, it establishes marriage, in my opinion, just as a financial matter.

17,805. I suppose you recognise that the county court judges do come into contact with poor people?—Yes.

17,806. You know the districts of Edmonton and Tottenham?—Yes, I live in Tottenham.

17,807. And you know I have very much to do with the poorer classes?—Yes, I daresay.

17,808. In your position do you come in contact with the superior artisan classes and clerks, and people of that kind?—In my present position, no; but when I was at the police court, yes.

17,809. When you say you can give evidence of the wish and desire of that class, in your opinion would they be opposed to divorce?—I can only say this, that I have not been consulted by any clerks with regard to divorce. I can quite understand the difference of feeling between them and the ordinary labouring class.

17,810. (*Sir Lewis Dibdin.*) I think you said you were for a great many years a police court missionary employed by the Church of England Temperance Society?—Yes.

17,811. Is it a fact that all the police court missionaries in London are employed by that society?—Yes, I think so.

17,812. I think there are police court missionaries attached to all the Metropolitan police courts, are there not?—Yes.

17,813. You have told us that the poor very often consult you. Would it also be true that the magistrate refers cases to the police court missionary very frequently?—Yes, very frequently.

17,814. Would that be true with regard to these separation order cases?—Yes.

17,815. When an application is made, I mean?—Yes.

17,816. Do they often stand over for inquiries to be made?—Occasionally.

17,817. And is the police court missionary often charged with those inquiries?—Yes. Might I say here that I would charge the probation officer with those inquiries now. The probation officers have a legal power that the police court missionaries have not. Although the police court missionaries are probation officers, still, I would give that power to all properly appointed probation officers.

17,818. It is a fact that police court missionaries in most cases have been appointed probation officers, is it not?—Oh, yes.

17,819. Now you were telling us about the case of the habitually drunken wife, where the husband gets an order against her and practically turns her into the street with a pittance too small for her to live respectably on. It has been suggested that that is a case where it would be better really that there should be a divorce. Now, one sees quite easily the advantage to the husband, but in your experience do you think that that would at all amend the position of the woman—if,

instead of being separated on 7s. a week, she was divorced from her husband?—No, I do not, I think it would be bad for the woman.

17,820. It would be rather worse than it is now would it not?—It would.

17,821. Take the other case you have mentioned where the wife gets an order against her husband, and he does not pay the maintenance and she is placed in very great difficulties, and sometimes great moral danger, by that happening. Suppose that, instead of a separation order, a divorce were granted, would that amend the position to the wife at all. You see then she would possibly be able to find another husband?—Well, I could not answer that question. So very much depends on the circumstances and the individual. I cannot answer definitely that the thing should be so and should not be so, because the individuals and the circumstances are different in every case.

17,822. I can quite understand that the circumstances of each case must be considered?—Yes.

17,823. Now take the case, (speaking with your very great experience) of a wife and a young family, where the husband is brutal and a separation order is granted, and he is ordered to pay maintenance, which he does not pay. Supposing on a reform of the law, instead of a separation order a divorce were granted, what would then be the position of the wife and the young family?—She would have to work and keep them, sir.

17,824. That does not look as though she would be better off than with a separation order?—No, she would not. The chances of her being married to any decent fellow, if she has a young family, are very remote.

17,825. That is what struck me very much about it—that surely the chances of a young mother with a considerable family of young children, who is divorced from her husband, finding a respectable partner who would really help her in life's struggle is rather remote, is it not?—It is very remote, unless she got some foolish old man, which would make the circumstances worse.

17,826. And if she did not, then her position would be rather worse than better, would it not, if it were a divorce instead of a separation order?—It depends on if you made a separation order or a divorce.

17,827. There would have to be a further change in the law, and she would have to get an order for permanent alimony from the husband?—Yes.

(*Chairman.*) That would not be a change in the law.

(*Sir Lewis Dibdin.*) There would be as far as separation orders are concerned. I am talking about the adequate facilities that are proposed. You would not only have to give the county court jurisdiction, but you would also have to give it jurisdiction to grant alimony.

(*Chairman.*) That is exactly what the High Court does now.

(*Sir Lewis Dibdin.*) Yes, but I am not talking about the High Court, but the county court.

(*Chairman.*) But the idea is, if it were extended it would operate in both courts.

(*Sir Lewis Dibdin.*) I know; and it would have to be not only a change in the law giving jurisdiction, but you would have to give to that court the power to grant alimony.

(*Chairman.*) Certainly.

(*Sir Lewis Dibdin.*) That is exactly what I was saying.

17,828. Now if you will follow me. Supposing the law were changed, and county courts given jurisdiction in divorce, and also to grant alimony. Supposing that order for alimony were made in the case we are putting, is it likely that the permanent order for alimony would be obeyed any more than the order for maintenance that has been disobeyed?—Certainly not, under the present conditions.

17,829. You have told us that in many of these cases, after the separation order has been made, the husband is found living in immorality?—Yes.

17,830. In your experience, is that immorality always the result of the separation order, or has it sometimes been more likely the cause of the applica-

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tion for separation. I mean, the immorality has gone before the separation, and not followed after only?—Both cases are true, sir.

17,831. But in some cases, at any rate, the husband has gone wrong and that has put the whole thing wrong?—Yes.

17,832. Now, I quite understand your point of view that facilities for divorce are undesirable for the poor, but I am not sure that I understood what facilities. I gather that you are against making divorce easy on slight or frivolous grounds?—Yes.

17,833. Is that what you mean by adding facilities for divorce?—No; I would not do anything that would popularise divorce among the poor. At present they hold faster to the sanctity of marriage, I believe (I am only speaking of my knowledge of the poor and my reading on the other), than any other class, and I should be very sorry to see their idea of marriage lessened in that respect.

17,834. Is that with regard to the respectable poor?—Yes; to the very poor, too.

17,835. Now, I suppose there is a class of the very lowest—not always the very poorest, but the very lowest—to whom neither marriage nor divorce means anything at all?—Oh, yes, unfortunately there are a very large class, but I am now speaking of the industrious and the working poor.

17,836. So I thought, and I quite follow your view as to not familiarising them with the idea of divorce; but it is quite necessary, is it not, that there should not be what is called one law for the rich and another for the poor?—Well, that depends on the quality of the law.

17,837. Let us be quite clear about it. Are you in favour of repealing the present Divorce Act?—Am I what?

17,838. Are you against divorce altogether?—No.

17,839. Are you against the law as it stands now, that there should be divorce for adultery of the wife, and adultery, with either cruelty or desertion, of the husband?—No.

17,840. You are not?—No.

17,841. It is an injustice, is it not, if that relief, which you regard as a proper relief to be given to a citizen—it is unjust, is it not, if any citizen is debarred from getting that relief simply because he is a poor man and has not money?—I have said there may be cases; there are undoubtedly—yes.

17,842. So that the difficulties (I quite understand what you mean) that you would put in the way of divorce are not financial difficulties, are they? You do not want to make it difficult for a man to get divorce simply because he is a poor man and cannot afford to pay the fees?—No.

17,843. And that position, I suggest to you, is perfectly consistent with not desiring, for instance, to have hundreds of tribunals over the country who can give divorce?—I should be sorry to see it, sir.

17,844. Your objection is not to granting the poor man financial relief to get to the Divorce Court, but your objection is to taking the Divorce Court right over the country, multiplying divorce courts?—Yes, I quite agree, if there are what might be considered legitimate grounds for a poor man or a poor woman obtaining divorce, that they ought to have some means of obtaining that divorce, but —

17,845. And suppose they are too poor —

(Chairman.) Let him finish.

17,846. (Sir Lewis Dibdin.) I thought he had. Yes, please continue?—But I would still have considerable difficulties in the way. That is to say, it should not be easily obtained, it should not be lightly obtained, and it should be invested with a certain amount of trouble and dignity and the rest of it.

17,847. (Lord Guthrie.) Which police courts have you been most acquainted with?—I was at Lambeth five years and North London about twenty years.

17,848. I forget the name of your book; I think you have it there. You referred to something that you said was in the book?—Yes, I have a chapter on police court marriage—"Known to the Police."

17,849. Just tell me the name of the book?—"Known to the Police."

17,850. (Chairman.) Would you mind presenting it to one of the Commissioners so that he might read it?—I should be very pleased to do so, my Lord.

17,851. (Lord Guthrie.) Have you written anything bearing on this question we are dealing with?—Yes, several articles in the "Contemporary Review."

17,852. Under your own name?—Under my own name.

17,853. Over how many years?—From 1900 to 1905, and in my previous book.

17,854. Now you have referred to the poor. Of course, we know you have come in contact with the criminal poor very largely, and you have come in contact, as you have said, with the labouring poor?—Yes.

17,855. Have you come in contact with those rather above these—the skilled artisan—much?—Yes—well you see I have occupied a very peculiar position, and I question whether anybody in the whole of London has received the confidence that I have from rich and poor; from the middle class and the upper class. I might say my house has been the source of pilgrimage from all parts of the world.

17,856. Would you say, with regard to all the classes you have come in contact with, that you have not found any considerable number of cases where people who ought to be able to obtain divorce are deprived of the remedy at present?—Well, the rich and the commercial classes who have consulted me, of course, have never consulted me about those matters. It is generally about one of the family that has gone wrong. But with regard to the working classes, I say again, I have not been consulted.

17,857. Is it the case that those people who are unable to obtain divorce just now on account of the expense, know it quite well?—Oh, quite, probably; but I know it is also utterly foreign to the thoughts of the poor.

17,858. But if they know they cannot obtain a divorce, I suppose they would not think of consulting you as to a divorce?—Oh, probably.

17,859. With regard to the probation officers; at present, except under the Children Act, is there any statutory probation officer?—Oh, yes.

17,860. Would you tell me the Acts under which these are appointed by the State?—Well, the Probation Act of 1908—Mr. Gladstone's Probation Act.

17,861. That is one?—Yes.

17,862. Any other?—Well, that was the Act that appointed them.

17,863. Is it your view that in the future, wherever matrimonial cases are dealt with—either divorce or, particularly, separation—there ought to be some person attached to the court to whom the magistrate or the judge could appeal and refer cases, both in the interests of the spouses themselves and of their children?—Certainly.

17,864. Does the system of voluntary police missionaries really meet the demand all over the country?—No. It has met it very considerably; and now that the police court missionaries and others are being appointed probation officers it ought to meet it fully, provided the court and others will make proper use of them.

17,865. With regard to separations; do you think that permanent separations should be abolished, and that temporary separation should be specified in all cases. Is that your case?—You cannot make a permanent separation, my Lord.

17,866. It is done now?—No, my Lord.

17,867. The judicial separation in the High Court?—Well, they can laugh at it and snap their fingers at it, as they frequently do.

17,868. I beg your pardon?—Who is to hinder their coming together again?

17,869. And who is to hinder divorced people re-marrying?—Oh, yes.

17,870. But at the present moment a separation order is made which renders it impossible, unless the spouses are both willing, to re-unite. Do you think that should continue?—I would not grant separation for a limited time. I would allow the law to be as it is, with this exception. I would utilise every means at

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[Continued.]

the disposal of the court before the separation was granted.

17,871. Why would not you grant limited separations. There is a great deal of diversity of opinion about this, you know, and we would like to hear your view?—Yes. Well, it does not take many weeks for a married couple sometimes to find out they made a mistake in having a separation at all. They find the money divided does not go far, and that the other spouse was not so bad after all, and a little estrangement for a week or two brings them together again. If it was made for six months they would feel they would have to live apart for six months.

17,872. But would not that be met by the magistrate making the period, say, a month. It is in his discretion?—I am not in favour of temporary separation.

17,873. Do you think, with regard to the difficulty wives have in getting the maintenance from their husbands, that that would be met by ordering payment either to an official of the court or to the wife direct from the employer?—Yes.

17,874. Well, take the official of the court. Do you think that employers would be willing to pay to an official of the court, or would it lead to the dismissal of the man?—Well, I would have the payment made to the probation officer that had charge of the case previous to the separation.

17,875. By the husband, or the employer?—Either of them.

17,876. If the employer was willing?—Yes.

17,877. If he was not willing, then the husband should be ordered to pay?—Yes.

17,878. And the probation officer would administer it to the best advantage for the spouse or the children?—Yes.

17,879. You said you would continue the present system of divorce for adultery, and would add divorce for long-continued malicious desertion. Have you considered the other causes that have been suggested here, namely, habitual drunkenness, persistent cruelty, and long-continued sentence for crime?—Well, with regard to habitual drunkenness, I would give no separation or divorce for that until the means I have outlined had been tried.

17,880. And if these failed?—Then I would.

17,881. Take lunacy—the patient being confined in an asylum, having been there for a lengthened period and being certified as hopeless; what would you do there?—Well, I do not know, I look at it like this, that if it is illness it is an affliction, and if you allow a divorce for lunacy, why not for other diseases.

17,882. You think that is a new principle?—Yes.

17,883. Not fault, but misfortune?—That is it.

17,884. Take the other case, please—the long sentence of penal servitude, where you have the element of fault, you know. What do you say, in the interests of the innocent wife, let us say, and children?—What do you mean, often repeated sentences?

17,885. No, suppose a 10-years sentence?—No, sir, I would not; certainly not.

17,886. Why not, Mr. Holmes?—That man might not be an habitual criminal because he has a long sentence; it may be some offence that was done almost in the stress of passion, or inadvertently; and I can quite understand that the idea that his wife and home were waiting for him might be a great factor in —

17,887. In his reformation?—Yes; but with regard to the habitual criminal, the man who has been repeatedly sentenced, and had been again and again to penal servitude, I think he ought to be divorced, and I think he ought to be kept in prison, too.

17,888. (Mrs. Tennant.) Mr. Holmes, I gather that you would, though reluctantly, grant divorce to the poor on legitimate grounds?—Yes.

17,889. But you think the effort to obtain it should be attended by some trouble and also should be surrounded by dignity?—Certainly.

17,890. And a certain amount of expense?—Yes.

17,891. Do you think those conditions would be better secured in the police courts than in the county court?—Yes.

17,892. But you can obtain a summons, surely, with greater ease at the police court, and at less cost?—The

county court savours altogether of a commercial transaction.

17,893. Then would you withdraw the suggestion of trouble and cost?—No.

17,894. But there would be greater trouble and greater expense in the county court than the police court?—Even so, I would not make it a county court affair at all.

17,895. Then would you say there would be greater dignity in the police court than in the county court?—Well, I think so. It is more of a humane institution altogether than the county court.

17,896. Would you remove the present inequalities that exist between men and women under the law?—Yes.

17,897. In the case of a woman or a man who is suffering from the infidelity of the other spouse, or from persistent desertion or cruelty, how would you give relief. I gather you would prefer not to see divorce made easier for the poor?—Well, I would have the divorce, if it is to be at all, settled in the police court, and have the same usage applied to it as I would to separation orders.

17,898. But you yourself prefer there should not be divorce?—I do.

17,899. You think it better to leave those people who are so suffering without the relief that divorce would give them?—Well, you have got to look at a very large question. Unfortunately, every law bears hardly upon some individuals, and if you are going to legislate entirely for the individual, you do wrong to the community in the gross.

17,900. Would you withdraw the present power of obtaining separations?—Would I withdraw it?

17,901. Yes, would you withdraw it?—No.

17,902. But I gather the chief objection to the granting of extended facilities for divorce is that it might create a demand for divorce?—Yes.

17,903. And I think you said that when the present facilities for obtaining separation orders were granted the number of applications went up?—Oh! yes.

17,904. So that you had in the case of separation orders what you fear in the case of divorce?—Yes.

17,905. Still, you would not withdraw the present power, though its institution was accompanied by that increase?—No, I would not withdraw the power, but I would have a very great alteration with regard to the way in which that power is used.

17,906. What I want you to consider is, that the same objection attended the increased facilities for separation orders which would attend, in your opinion, the increased facilities for divorce?—I did not quite follow.

17,907. The same objection of increased demand followed on the increased facilities for separation orders?—Yes.

17,908. But you would not withdraw that increased power because it was attended by that particular objection?—No, I would not withdraw it now.

17,909. You think on the whole it works well?—No, I do not.

17,910. You would rather reform the system than withdraw it?—Yes.

17,911. It is not the system itself you object to, or is it?—No.

17,912. I want you to look at the two things, if possible, from the same point of view, and see that a thing may be attended by objections and yet have merits. You feel that an increased facility for separation, though that was attended by the objection of increased applications, was a necessity; or do you not feel that the power of obtaining separation is a necessity to the poor or to any class?—I felt for many many years that it was an absolute necessity; I advocated it and worked very very hard for it, but I did not anticipate one half the evils that have arisen. I saw the sufferings of men and I saw the sufferings of women, and they went deeply into my heart, and I advocated for years some of those Acts before they were passed; but I did not expect they would be followed by such wholesale misery as has followed; but neither did I expect that they would be so easily granted.

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[Continued.]

17,913. Then you feel that the object should be to have a good system that would guard against danger rather than to deny the power altogether?—Yes, you must have a system.

17,914. You must have a system?—Yes.

17,915. For separation?—You must.

17,916. Then when you consider the greater evil, and greater suffering that would generally attend the causes for divorce, do you think you should supply a system to meet that need?—No, I do not; and I will tell you why. It is not only possible, but it is quite probable, that a good many of those men and women that are separated will, and do, reform (a good many of them), and will come together again. Some of the most hopeless people I have ever known are now living together in—I will not say abounding happiness—but in a peaceful sort of life. Now, if you grant a divorce, you cut off all idea of reform, in my opinion.

17,917. But there are those cases of which we have received evidence, such, for example, as persistent desertion, where there is no hope of the husband returning to the wife?—Yes.

17,918. And where the wife is, you would agree, in a very embarrassed and difficult position?—I have said if the desertion lasted a considerable time—I will not say how long, but at any rate a number of years—it ought to be a ground.

17,919. Then we come to the difficulty that the wife, owing to the expense of divorce, cannot obtain divorce because of the difficulty of cost?—Yes.

17,920. In spite of that, you still prefer not to see the possibility of it extended?—Yes. I think there should be some means by which she might receive some help; but whether I would alter the law for her—I do not think I would.

17,921. What is the purpose of the organisation which you have established among the women employed in the home industries in London?—In banding together the sweated women—women who make match boxes and artificial flowers; people who earn about three halfpence an hour.

17,922. Banded together with what view?—Of bettering their lives.

17,923. By legislative means?—Yes, partly; and I have just established a holiday home, and I shall have about a thousand resting there during the summer.

17,924. Are they—a good many of them—widows?—A good many are women who have husbands and a good many aged spinsters, and a good many widows. Some of them have come down—have lost friends, and many are in the under-world, getting a miserable living.

17,925. Do you work in connection with any of the settlements in London?—No.

17,926. Do you think these women are in touch with any of the social workers connected with those settlements?—I think the women and men are too much concerned in earning their living to take trouble about anybody other than those that come in contact with them.

17,927. The London settlements do take a good deal of trouble?—Oh, yes.

17,928. Perhaps you do not know much about them?—Oh, yes, I know many of them.

17,929. Do you know anything about the poor man's lawyers?—The magistrates have been the poor man's lawyers.

17,930. But poor man's lawyers attached to the London settlements?—Yes.

17,931. You do not know whether any of the women you are in touch with do consult the settlement workers in order to get help from the poor man's lawyers?—I do not know of any of them that consult the poor man's lawyers.

17,932. We have had poor man's lawyers here?—Yes.

17,933. Who have given evidence as to the number of applications that have been made to them with regard to relief, for example, in matrimonial cases?—Yes.

17,934. I thought it would be interesting to see if you knew that women do apply, and also men, to Settlements and similar institutions?—Oh, yes.

17,935. Where there is legal aid attached?—Yes.

17,936. The giving of legal aid in such matters as divorce is, of course, no part of your work?—No.

17,937. (*Lady Frances Balfour.*) I think you said in answer to Lord Guthrie that you had not been consulted on the question of divorce because they know they cannot get it?—No, I did not say so. I said I have not been consulted about divorce, and it was suggested it was because they knew they could not get it, and I said probably that might be one factor. But the great factor is, in my opinion, that divorce is utterly foreign to the tastes of the poor.

17,938. I think your expression was that the poor have a great sense of the sanctity of marriage, and that is why they dislike the idea of divorce?—Yes.

17,939. But do you think the sanctity of marriage is much regarded in a number of cases that apply for separation, and the various grounds on which they apply for it; drunkenness, cruelty, cruelty to the children of the worst description; does that show a great regard for the sanctity of marriage?—It does not show that they themselves had very much regard for the sanctity of marriage, certainly; not if they indulged in half the list of evils to which you have referred.

17,940. But those are the reasons for which the separations are applied for very largely?—Yes. You see cruelty to children is a very difficult thing. If you have people married in a certain class you are sure to get cruelty to children.

17,941. But that is a case where a woman applies?—And that is the reason why she should not have married him.

17,942. As you know, a woman applies sometimes for separation because of the particular form of cruelty of the man to the children?—I do not know that.

17,943. But all these cases—desertion, drink, and cruelty—do they show a very high sense of the sanctity of the marriage tie?—Certainly not. You have to consider the mass of the people; not the few that apply.

17,944. I do not see the distinction with regard to that between those people who go for separation orders or go for a divorce if they could. The marriage contract has not been carried out in any one sense?—No, still you may take it from me that a divorced woman is looked upon absolutely amongst the poor as a woman in disgrace. Whatever it may be in any other walk of life I do not know, but a divorced woman is looked upon as a disgrace.

17,945. And the woman who has a separation is not looked upon as a disgrace?—No.

17,946. She still has kept the marriage contract?—No, she has not, but it is looked upon as a different thing.

17,947. (*Chairman.*) Do you mean it is a disgrace if she herself has got a divorce because of the wrong of her husband, or where it is her own misconduct that brings it about?—Well, I could not say that. I have had no experience.

17,948. I only want to know what you mean by saying she is looked upon as a disgrace. Does that apply to a case where she, being perfectly innocent, has obtained a divorce against her husband?—No, I am speaking of the sentiment of the poor. I have already said I have never had a case of divorce amongst the poor in my life.

17,949. But you say a woman divorced is looked upon as a disgrace?—Yes.

17,950. Does that mean a woman who is divorced from her husband, or a woman who has obtained a divorce because of his fault?—No, a woman who is divorced.

17,951. Because of her own fault?—Yes.

17,952. Well, how does that apply to a case where a woman has a divorce because of her husband's conduct?—I have not had any experience of either, really.

17,953. As to lunacy, do you know it is suggested that it is not always a misfortune, but is sometimes a fault. Have you had experience of cases of general paralysis of the insane?—No, I do not know that I have.

(*Chairman.*) I ought to thank you very much for the assistance you have given us.

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[Continued.]

Mr. ROBERT HOLMES called and examined.

17,954. (*Chairman.*) Perhaps I may make a preliminary remark. I have a proof of yours which answers certain questions, and a proof which I have just had handed to me, which seems to be an expansion of it?—Yes.

17,955. Which do you wish to be examined upon?—The last one, my Lord.

17,956. I have only just had that handed to me this morning?—I do not think I personally have sent in a former one to the Commission.

17,957. I have one beginning "My experience as a Police Court Missionary?"—That is the one, my Lord.

17,958. And there is another one which is in answer to some questions?—Yes.

17,959. What is the difference between the two?—The one is in reply to certain questions submitted to me by his Grace the Archbishop of York. He sent me a list of questions which I concluded was a private list, and I sent a reply to his Grace.

17,960. We have those?—I suppose his Grace must have sent them on.

17,961. And the proof is what I may call more formal document giving the matter in sequence?—Yes.

17,962. I will take you on both because perhaps some of the questions have more in them than the proof. Are you a police court missionary?—Yes, my Lord.

17,963. We have heard they are all Church of England Missionaries; are you one?—

(*Sir Lewis Dibdin.*) No, that is the London ones; I was not sure about the country; perhaps your Lordship will ask.

17,963A. (*Chairman.*) Is your missionary work connected with the Anglican Church?—Yes.

17,964. The Established Church?—Yes, but in Sheffield there are lady missionaries, who deal with the women and the children, and they are the agents of the Women's Christian Temperance Association, which is quite undenominational.

17,965. You, yourself, have been at this work for the last 12 years in Sheffield?—Yes.

17,966. I do not know whether you have heard the evidence given by Mr. Thomas Holmes?—I did not hear the evidence.

17,967. Well, what is the general work you do as missionary?—One sees to the men and the ladies see to the women. We divide it.

17,968. At the police court?—At the police court. I should take the male prisoners above the age of children, and the lady missionaries would take the women—girls and young children—and I should see to the people that are locked up. But that would not apply to applicants for separations; they would not be locked up. With regard to the summons cases, I should receive a list from the officials of the court of the applications that had been made for separation orders, and then I should endeavour to see the applicants for separation orders before the summons was down for hearing.

17,969. Then your duty embraces an inquiry into the position of the separation order people?—Yes.

17,970. Now during the last 12 years you have been at work in this way?—Yes.

17,971. To what extent do you think in your experience there is any demand for facilities for divorce among the classes you deal with?—It is very small.

17,972. Can you give us any notion of its extent?—Yes, I have inquired into 1,817 cases.

17,973. Under the separation applications?—Not necessarily. They may be people who have come to me and whom I have advised not to trouble to go for separation.

17,974. Well, will you tell us the result?—In 1,817 cases—matrimonial cases—about 1,600 have had an idea of applying for a separation order. Roughly 800 have not done so.

17,975. To what extent have they had the idea of divorce?—In 22 cases out of 1,817.

17,976. In those cases was there any desire

expressed for divorce?—That is the only thing you can judge by.

17,977. In how many of the cases that came before you, apart from those 22 which expressed a desire for divorce, could a divorce have been claimed if they had desired it?—I should say 178.

17,978. Out of 1,817?—Yes, 9 per cent.

17,979. (*Sir Lewis Dibdin.*) That includes the 22?—It does.

17,980. (*Chairman.*) Are those cases in which, if they had the means, they could have brought a suit?—I think so.

17,981. Can you tell me in how many of those cases the wife's adultery was a factor?—78.

17,982. And how many husbands?—81, cruelty and adultery.

17,983. And in 19 you have—something else?—Cruelty and incest.

17,984. What is it you think acts as a deterrent from a desire for divorce—when that deterrent exists?—It has always struck me that the condition of the poor is vastly different from that of the wealthy. If a lady be wealthy, and her friends think she ought to have a divorce they can make some arrangement for her future maintenance; but in the case of the poor woman she probably prefers a separation order and takes her chance of getting the money under the order, because she feels she must live.

17,985. But if a divorce order embodied a payment order that would be the same would it not?—Yes.

17,986. That is an order that can be made in the High Court cases?—Yes, but I think the view taken by the poor is that as things are at present they do not think much about divorce applying to them at all.

17,987. What do you think if the grounds of divorce were added to—say desertion, permanent lunacy and long sentences of penal servitude?—I should not care to see divorce granted instead of separation orders to any large extent.

17,988. But with the alternative what would you say?—I should prefer to maintain the existing separation orders merely on the ground that so large a number of the persons separated go back and become reconciled and live together.

17,989. Then what do you find happens in those cases where they do not get reconciled?—Well in those cases I would allow it. If it were possible—I am not a lawyer—in cases that often come up a woman struggles and pays 3s. 6d., and a warrant is issued for the payment under the order and the husband is sent regularly to prison, and nothing happens for years, and perhaps he has formed another connection—in those cases I would grant a divorce. There are cases where the man comes backwards and forwards over and over again—the police books show that; he has been in and out of prison for 20 years; in those cases I should grant a divorce.

17,990. You would deprecate anything being done to lessen the notion of the sanctity of marriage?—Yes.

17,991. But you would give adequate relief where it was really necessary?—Yes.

17,992. I think you have seen many cases of re-union after these orders?—520 out of 800.

17,993. And have those been successful in their re-union or have they come again?—Those are the successful ones, those that remain.

17,994. Have you known at all cases where they have come back again for another separation order after rejoining?—Oh, yes.

17,995. Is that common or not?—It is not common but it occurs.

17,996. I see from your proof you speak of the wife—whatever has happened almost—still regarding the man as her husband?—Yes; if you notice I divide the poor into two classes.

17,997. I have not quite appreciated that—perhaps you will explain it?—Well very widely-spread among the poor—I should say 9 adult persons out of 10 amongst the poor have what our ancestors termed the fear of God in their hearts; they may not make any pretence of religion, but they have this fear of God in their hearts, and we see very little of that class

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[Continued.]

of person applying for separation orders; they bear a great deal. One woman I met in the workhouse hospital told me her husband had not worked for three years, though he could have done, and she maintained him; and for her to have gone back to that life would have meant her early death, and I had to persuade her myself to take out a separation order. The only object of that was to prevent his insisting on her maintaining him; but she regarded him as her husband still.

17,998. That is a very large proportion; but what about the other proportion?—When there is no fear of God—to use an old-fashioned expression—I do not think they often trouble to apply for a separation order even; they are a law to themselves.

17,999. Would you just tell us from your proof what is done in those cases. It is the second page of your proof?—May I begin with what leads up to it?

18,000. Yes, read anything that makes that plain?—“Where there is not this fear of God, however, the matrimonial relations of the poor are most incredibly evil. Fornication is common; illicit intercourse being permitted, even encouraged, by women in the hope of securing husbands thereby.” Mothers will encourage their daughters to allow intercourse in the hope that when their daughters become pregnant that the man will marry the girl and so secure a husband for her. Again, adultery after persons have passed the age of 30 is even more common. When a man reaches the age of 30 he will shake his head and tell people of his own class that he is not fool enough to go with single women; his method is to go with married women. I do not wish to be misunderstood; they are limited in number, though the number is very much too large; but amongst the very poor, and the ungodly poor, adultery is very common in that sense; while the husband is away from home these men resort to the house and have intercourse with the wife. Then again adultery is fearfully common in the squalid parts of our large towns owing to that. Married men are frequently found living with the wives of other men. I have on my books at present nine married men who have been either placed on probation, or have been remanded, or have been punished by the court, and who are living with other married women. The married women often leave their husbands to consort with single men, and the reverse takes place with single girls. Even a deliberate exchange of wives is not unknown. We do not often meet with these cases in the courts on applications for separation orders, but in connection with cruelty to children and in connection with attempted manslaughter and violent assaults, and Saturday night drunken rows.

18,001. Well, you are pointing out a very horrible state of things in what you are saying?—Yes, and to a large extent it is necessary therefore to have such an excellent society as the Society for the Prevention of Cruelty to Children.

18,002. And you say it leads to breeding a puny and all but imbecile race?—Yes, I can point to numbers of half-witted persons who come on the rates—the offspring of these illicit unions.

18,003. Now you say divorce is no remedy. What do you suggest should be done to meet what you are describing?—I know of nothing so likely to affect this as what one sees in individual cases. One has known men who have lived a very careless life for years who have been parted from their wives for years, and then a religious revival has taken place, or some preacher has been speaking from a van in the open-air, and these men have listened to them, and they have been what is usually termed “converted,” and a happy re-union has taken place in spite of all that has passed, and the only thing I can see that is likely to affect the masses is more preaching, especially more visiting. People tell me, and I am bound to believe them, that they have never seen any clergyman or any lady of a superior station—nobody to take the slightest interest in them—for years; and I think this state of things exists only because the poor are left so much to themselves—consequently I think these settlements and the present work going on amongst the poor—

18,004. That amounts to saying that efforts to raise the social order is what is wanted?—Yes.

18,005. Now that brings me to the separation order point. But perhaps I might read the questions and answers. The first question is, “Is there so far as your experience extends a widespread, or any demand for greater facilities for divorce amongst (a) the poor and (b) the lower middle classes”?—Yes.

18,006. You have just been telling us about the more degraded classes?—Yes.

18,007. What do you find amongst the lower middle class as to a demand?—It is very limited, my Lord.

18,008. In what class of case, or for what class of misconduct does it arise?—In the husband’s adultery. I am referring more to a demand for divorce which might arise if the facilities were extended, and if a divorce were granted for adultery only. Then there would be a certain number of applications from women of the lower middle class.

18,009. Who at present cannot make the demand because of the other things they have to prove?—Yes.

18,010. And is it also the difficulty of the locality of the court and the expense?—Not usually.

18,011. Then Question 2: “Does the expense attending divorce proceedings lead in your opinion to unlawful connections being formed by persons who if they could afford to claim it would, under the existing laws, be entitled to a divorce? If so, to what extent?” Then your answer: “Yes; but to a very limited extent only; on the other hand many innocent and wronged persons who find it impossible to continue cohabitation with husbands or wives, from attachments with other persons whom they would marry if divorce were possible for them”?—Yes.

18,012. To what extent do you find that?—I have found it to a considerable extent. Sheffield is not a city where there is much employment for women—there is a certain amount—but as far as the east end of Sheffield is concerned—the steel works—there is very little employment for women; consequently if a woman is separated from her husband and he does not pay the maintenance ordered by the court that woman has to resort, in order to maintain herself and her children, to taking in lodgers; and then a perfectly chaste woman occasionally finds that there is a lodger comes along that takes a real interest in the children and is almost a father to them, and that gradually leads to an unlawful connection between the lodger and the woman with whom he is lodging. In that case I feel it is only a worthless husband standing between a respectable union, and she should be able to marry the man that has shown himself to be a man where the husband was only a beast.

18,013. Then Question 4, “If the law were altered in the manner indicated in the last question (the obstacle of costliness of proceedings being also removed) would the effect be in your opinion to loosen the sense of the binding character of the marriage tie amongst (a) the poor, (b) the lower middle classes. Reply (a) Yes, I fear so; (b) yes, I fear so.” Why is that?—Well, it may not be logical, but at the present time I think that this very feeling among the poor that it is no use their thinking about divorce has a tendency to keep up the high ideal of marriage in the minds of the poor, and though I quite admit one comes across cases frequently where one feels the individual is suffering very hardly on account of the inequality of the law between rich and poor, yet I feel the condition of the poor is so very difficult that I doubt if it would be wise to extend the facilities, and whether it is not better, even in view of these hardships being continued, to let the law remain as it is.

18,014. But if the hardships were removed it might get rid of all your lodger cases?—Yes, I quite see that.

18,015. Might not that rather tend to raise the standard than lower it? It might, but I feel there is not now the same consideration that there used to be amongst people of the very poor classes on entering into matrimony, and I am afraid there might be a tendency to give matrimony a trial with the idea that

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divorce could be obtained if they were not as happy as they wished.

18,016. Not if they were limited to causes that showed real misconduct on the part of the respondent?—I suppose not. Possibly my fears are quite groundless.

18,017. Well, it is very useful for you to express them to us. Then No. 5: "If divorce were made cheap, and were allowed in cases of mere desertion, would the result in your opinion tend generally to the promotion of morality amongst (a) the poor and (b) the lower middle classes, or in an opposite direction." Your reply is: "(a) Yes."—I am not sure what that is in answer to. The question is, "If divorce were made cheap and were allowed in cases of mere desertion, would the result, in your opinion, tend generally to the promotion of morality amongst (a) the poor and (b) the lower middle classes, or in an opposite direction," and the answer is, "Yes, I think fewer persons would live in adultery." I will read the whole answer: "Many poor women, after being driven to obtain separation orders, find themselves in the position of widows. No money is ever paid for the maintenance of themselves or their children, and after a series of fruitless prosecutions for arrears under the orders, they cease to trouble their husbands, seeing that no satisfaction results from their expenditure of time and costs. As they must live somehow, they take in lodgers. Attachments spring up, marriage would follow were the women divorced; instead, they live together. But usually the idea is to marry as soon as they are 'free.' Of course, this idea is forgotten (usually by the men) before long; the women having forfeited their esteem by consenting to live 'tally.'"

18,017A. What is that?—As man and wife without being married.

18,018. "It is in this manner that I think cheaper facilities for divorce would improve morality." Then (b) Yes, I think there would be less illicit intercourse. Women neglected by their husbands frequently form attachments which would remain honourable but for the impossibility of marriage with those whom they love; though their husbands are husbands in name only. I am against any alteration of the Divorce Law. But on the other hand I cannot say that grave ills do not exist under the present system. My remedy is the more faithful preaching and living of the Gospel of the Lord Jesus Christ. Either let us make marriage more like what it should be, or else let us make it possible for those to whom it is just an irksome tie to be free." That is the statement you give?—Yes.

18,019. What is really intended to be conveyed by that? Do you think there should be opportunity for these people to have adequate grounds for divorce being able to maintain a suit, or do you think not?—I have no religious scruples on the matter of divorce, feeling as I do that times have very greatly changed since the days that are usually appealed to for settlement of these matters and matters of religion. There have been great changes I mean. There were deterrents that do not exist now. It was a serious thing for a woman to commit adultery in old times, but those deterrents have ceased to exist. Consequently, my religious scruples are not such as some people's are, but I do not think a divorced woman would necessarily be better off. I think it would be very much better indeed if people who know that Power that can uplift even the most degraded, would take a more serious view of their responsibilities as Christians and uplift the poor by the only means that would do it. That would be much better, but it is not being done in our great cities. There are thousands who do not hear such a message. It may be said, it is true, that they do not go to places of worship, but they are not sought out. I should like to see that done. Still, it is true that such a lot of misery exists, and I think, therefore, I should like to see facilities granted.

18,020. Then No. 6: "Is the present system of separation orders made by magistrates in your opinion working well or ill. Should it be maintained

"or abolished or amended? If amended, how?" Your reply is: "Yes, in my experience, maintenance rather than strictly separation orders are usually made by the magistrates. These have the effect of providing for the sustenance of wives and families until (as usually happens) reconciliation is effected." Question 7: "In what proportion of cases of application for separation orders which have come under your notice have you had reason to think a divorce might have been claimed had the parties been able to afford the expense of a suit in the Divorce Court. In what proportion of such cases have you had reason to think that adultery (whether openly charged or not) was a factor. If possible give the number of cases known to you personally and the period of time covered." Reply: "The proportion is very small; 50 out of, say, 800 cases in 10 years." Then question 8 is—

(Sir Lewis Dibden.) I do not follow what that is an answer to quite. There are two questions.

(Chairman.) Yes, the question is: "In what proportion of cases of applications for separation orders might a divorce have been claimed if the parties could have afforded the expense of a suit. . . ." That is the first question; then, "In what proportion of such cases have you had reason to think that adultery was a factor?" "Give the number of cases," and your only answer is: "the proportion is very small, 50 out of say 800 cases in 10 years." Would you explain that.

(Mr. Brierly.) There is a copy. (Handed to the Witness.)

(Witness.) Might I just say a word about question 6 my Lord?

(Chairman.) Yes?

(Witness.) In Sheffield, until a comparatively recent period, all orders issued by the court were separation orders. Within the last two years there has been a very salutary change, and, except separation has seemed desirable because of the brutality of the husband, a simple maintenance order has been issued. I have no means of knowing whether there are many courts which are as the Sheffield courts were a few years ago and where separation orders are issued, but I have good reason to prefer the maintenance orders simply.

18,021. Except where protection is needed?—Yes.

18,022. Then, as to question 7, as Sir Lewis pointed out, the answer is not sufficiently explicit?—My answer is to the first part of the question.

18,023. It is said that the proportion of cases is not very large in which, if they could have afforded the expense, they would have availed themselves of divorce?—Yes.

18,024. To "what is the proportion" you say "50 out of 800"?—Yes.

18,025. Is there anything you would like to add to No. 7?—You will find all this extended—

18,026. Well, may I finish the two Questions, and come back to that after?—Very well, my Lord.

18,027. Question 8: "In what proportion of cases of applications for separation orders which have come under your notice has the application been withdrawn or no order made in consequence of a reconciliation having been effected between the parties." Reply: "The proportion is very small; as 5 to 78." Then Question 9: "In what proportion of cases of separation orders which have come under your notice has the order been superseded at the instance of the parties, a reconciliation having been effected?" Reply: "In a very large proportion of cases; as 8 to 27." That is reconciliation?—Yes.

18,028. Then the next is, "In what proportion of cases of separation orders which have come under your notice has the order been followed or preceded by the formation of an unlawful connection or by either party lapsing into an immoral life in the case (a) of husbands, (b) of wives. Please answer this question separately, though it is to a large extent included in the preceding Questions, 3, 4, 5." Answer No. 10, is "(a)" that is the husband—"the proportion is as 2 to 21." Then, (b) that is the wife—"the proportion is as 2 to 15." Then you make the wives' lapses rather more than the husbands', which is

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contrary to what we have heard before?—I am afraid that is my experience.

18,029. Is that because of this lodger point?—Well, the question deals with immoral life before separation as well as after separation, and men more frequently lapse into immorality after a separation than women who have been previously chaste; but frequently women who have hitherto been of doubtful character lapse into prostitution.

18,030. Before the order was made?—Before the order was made they would be of doubtful character.

18,031. There would be no order in those cases, would there?—Possibly the court would not be aware of the fact, but in my experience in visiting I have come to the conclusion that they were of doubtful character, and my opinion has been fairly confirmed by the women descending into the life of prostitution and the order has lapsed.

18,032. Then differentiating between those lapsing before the order and those lapsing after, can you give us any information in what proportion there is a lapsing into an immoral life after the order is made?—4 per cent. of previous chaste women.

18,033. And of men?—10 per cent. Since I answered those questions I have been through the journal for 12 years. It is some months since I sent in those answers, and I have since been through the journal—

18,034. Then we will come to that later. Question 11: "What in your experiences have been the chief causes leading up to the applications for separation orders?" Reply: "Lack of affection between the contracting parties in marriage; failure to recognise the seriousness and religious nature of the marriage tie; drink; too early marriage; lack of means." Question 12. "Would a county court, in your experience, be a more acceptable tribunal for matrimonial differences than a police court in the case of (a) the poor, (b) the lower middle classes." Your answer is, "(a) No, I do not think it matters greatly anyhow; (b), No I do not think it matters greatly anyhow." What do you mean by that?—I think there is very little dignity about either the county court or the police court.

18,035. Then would you prefer to see this work done in the High Court?—I would.

18,036. If that could be arranged?—Yes.

18,037. Do you find that neither of the two courts mentioned is sufficiently dignified to deal with these cases?—That is my view. I remember mentioning to our stipendiary magistrate in Sheffield that I was sorry for a scene that occurred in court, and sympathising with the magistrate; and I mentioned that it took away from the dignity of the court; and he very calmly turned round and said to me: "Oh, Mr. Holmes, you will soon learn that there is no dignity about a police court." That was in my early days.

18,038. I should like to ask this. These separation orders for cruelty and drunkenness, and so on, of course expose all the family life of these people; would you suggest that those cases might all be heard in private by the magistrate. I gather that there is a great deal of reconciliation effected by the magistrate and there is a great deal of reconciliation effected after, and a great many of these details that can be of no public interest come out?—My experience is they are not published.

18,039. Then would you see any harm in those cases actually being taken in private?—Not at all.

18,040. Would you think it a good thing?—Very good. As a matter of fact we have nothing to complain of in Sheffield. I suppose it is due to the size of the town, and the papers being full of more interesting information. People have to be well-known in order

18,041. When these cases are on, do you get an audience that is amused and so on by hearing these matrimonial disputes. I am not speaking of adultery?—It all depends on whether the parties have any friends and acquaintances; if they have, they know the case is coming on, and they will be there, but the public do not usually come into that court much. With us they are taken in separate courts, and the

public generally prefer the court in which lock-up cases are heard, as we term them.

18,042. Crimes?—Yes.

18,043. Then No. 13 is: "Does the publication of newspaper reports of divorce cases, in your experience, exercise a corrupting influence. Does the publicity now given to divorce cases act as a check upon immorality." Reply: "(1) Yes, where lengthy and badly sub-edited reports are published. (2) Certainly. I should deplore non-publication, but I think careful sub-editing is desirable, and details ought not to be given." I think I have gone through the questions and answers, and we will turn to your proof. Perhaps you will take up your proof and give it shortly at page 3 and just read it: "The present system of separation orders"—"The present system of separation orders (in Sheffield courts, usually maintenance orders) made by magistrates, is, in my opinion, working well, and should be maintained. I have personally noticed 311 applications for separation orders not proceeded with, the applicants having on reflection decided to let things remain as they were." I mean there they probably had time to cool after a quarrel, and without being able to say that there would be any special amendment of any sort they have said they went together again.

(*Sir Lewis Dibdin.*) May I ask over how long this is?

18,044. (*Chairman.*) Is this over 12 years?—Yes. "402 applications not proceeded with through lack of means to instruct a solicitor, 49 not proceeded with because plainly hopeless, and 33 in which a reconciliation has been effected as a result of one of the parties promising amendment of life." Those are applications for separation orders which have never come forward for hearing. "In 520 out of 800 cases where separation orders have been granted, the orders have been superseded, a reconciliation between the parties having been effected."

18,045. The next you have already said in your answer?—Yes. Then "the moral effect of separation orders is on the whole good; but in about 10 per cent. of the cases which have come under my notice, the husbands have formed an unlawful connection, and, almost invariably, have failed to make the payments due under the order. In about four per cent. of the cases, previously chaste women have after separation formed unlawful connections with lodgers whom they have taken in so as to be able to maintain themselves and their families—their husbands failing to keep up the payments ordered for maintenance. In such cases, I recognise that there is something to be said for divorce."

18,046. The last is publication. I think your answer has dealt with that sufficiently?—I might say we have in Sheffield two papers published by the same office—the morning paper and the evening paper. The evening paper, while a great improvement on many publications in its way of dealing with reports of divorce cases, is a paper to be kept out of the way of children, in the opinion of most respectable people; but the morning paper is a very different publication. The report, while quite as clear and quite as full in many respects, has a good deal taken out of what appeared in the evening paper—it is well-known though they come from the same office. I find absolutely no objection—on the contrary I think it is a good thing—to have reports issued as they do in a respectable newspaper. But if something can be done to stop the nauseous details that come into papers sometimes, I think it should be. The only thing is that one paper circulates quite among the higher classes as well as the poorer; and the other almost essentially amongst the poorer only.

18,047. (*Mr. Spender.*) Might I just try and get a little clearer in my own mind your view as to the condition of these classes. You gave a very black account of one portion of the working class. I think you said one-tenth?—I would not put it higher than that, one in 10.

18,048. Then you are speaking of what is usually called the submerged tenth?—Yes, and some that

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would not own that designation, but whom I am afraid morally are as bad.

18,049. Do you think that any checks or anything done or not done with regard to divorce would affect the morals of that tenth?—I do not.

18,050. Then the question before us is narrowed down to the effect on the remaining nine-tenths?—Exactly.

18,051. And on the middle classes?—Yes.

18,052. Then your view with regard to the extension of the causes of divorce is a fear lest the nine-tenths of the respectable working class should have their ideas of the sanctity of the marriage tie impaired?—I would not go as far as that. I think a very large proportion of that nine-tenths would still retain a high conception of marriage, but there are always a certain number of people liable to leave the good influence and be drawn towards the evil influence. I think there are a certain number who, if divorce were granted and were common, would cast aside their better feelings.

18,053. Are you speaking of facilities for divorce; that is to say, cheaper divorce, in that sense equalising the distinction between rich and poor, or with regard to the extension of grounds for divorce?—Both.

18,054. You admit there are grievances among a certain proportion of the people of these classes?—Yes.

18,055. But you think for the sake of another proportion, and a small one, who might be undermined by it, that you would keep the grievances rather than remedy them?—You are asking me a hard question.

18,056. I do not mean it to be a hard question. I only want to clear it in our own minds, because we have to balance the good and bad results as far as we can?—My fear is that anything which tends to make people feel that if they could not get on in married life there was a simple way out of it, would tend to increase the number of what you have termed the submerged tenth.

18,057. But assuming we are thinking of equalising the conditions only between rich and poor, do you think this respectable portion of the working class—this nine-tenths—is more likely to be led astray than the well-to-do or middle class are by the existence of the present Divorce Court in London?—No, I do not think, speaking generally, whatever change were made in the divorce law it would at all affect the conception of the sanctity of marriage which is held by the poor generally.

18,058. Then, that is the only point I want to get at. Could we, without prejudice to that possible consequence, find a remedy for an admitted injustice to these people?—We must, I think.

18,059. Then, is it a fair inference that the greater number of cases that come into the police court for separation and maintenance orders come from your tenth?—Oh no, they never trouble us for separation orders. If they fall out they leave each other and find someone else.

18,060. Do not they come for maintenance?—They never come for a separation at all as a rule.

18,061. But for maintenance?—No.

18,062. Then you say —?—Of course, I mean not to any extent, when I say no.

18,063. Then I see you say after a separation order that in 520 out of 800 cases in the period covered by you the orders have been superseded and a reconciliation between the parties has been effected. Can you give us any idea as to what reconciliation generally means in these cases? Is it permanent usually?—In very very few, only 9 per cent., of these cases of separation do we find adultery to be a factor. It is usually that the man has got into the way of spending his wages on drinking and gambling, and when the magistrate has granted a maintenance order he realises he is expected to provide for his wife and family, and he begins to do it and he finds it is expensive to live away from her, and they meet together and she gives him a good lecture and they return.

18,064. But I am thinking of the 520 out of the 800 cases where separation orders have been granted. What I wanted to ask you was, in the cases of recon-

ciliation, can you show us how many come back again to the court?—None of these 520. There may be some in the other 280.

18,065. With regard to the newspaper reports, it is a question, you think, of carefully editing inside the office of newspapers, or do you contemplate a change in the law to impose it?—I much prefer it as a matter for the proprietors themselves to do. I do not know whether it is possible. I see a difficulty in the way of a censor.

18,066. (Sir William Anson.) Your figures range over 12 years?—Yes.

18,067. Then, do I understand in 1,817 cases of matrimonial difficulties they cover all the classes you described. Do they cover this tenth?—Our experience is that very few of the submerged tenth come to the court at all asking for separation or maintenance orders.

18,068. Then the cases that have come under your notice; have they come under your notice in visiting amongst the poor or through their coming to the magistrates?—In round figures 1,600 have applied for a summons or otherwise come forward for a separation. The remainder have come for advice to me.

18,069. And in only 22 the parties desired divorce?—In only 22 did they express any desire.

18,070. And could have obtained it if they could have got to the court?—I think so.

18,071. Then I understand you would prefer access to the High Court if made cheaper?—I should.

18,072. You would prefer that to either the county court or stipendiary magistrate?—Yes.

18,073. Do you think the present difficulty of obtaining a divorce has anything to do with this mysterious religious sense which a large number of people attach to the marriage tie?—I beg your pardon.

18,074. You speak of people who have the fear of God before them?—Yes.

18,075. Although they are not religious people they attach a mysterious solemnity to the marriage tie. Has that anything to do with their difficulty about divorce?—I do not know that it has, but where people make no open profession of religion—where they have, shall we say inherited, the feeling that there is a God who sees them—where there is that feeling, of course, the impetus sending them on a good life is weaker than where they make an open profession; and it is there that I fear a difficulty might arise.

18,076. Would this sense of the binding character of the marriage tie be relaxed if divorce was either cheaper or obtainable on several other grounds than it is now obtainable on?—I fear it would.

18,077. But you do find cases among the very poor in which there is a certain hardship because they cannot get a divorce?—I do.

18,078. Apart from making access to the court easier, would you enlarge the grounds of divorce to meet all those hard cases?—I think so.

18,079. You would?—I think so.

18,080. You do not fear that if the grounds on which divorce could be granted were enlarged it would lead to a general relaxation of the marriage tie?—I think there are grounds on which it should be enlarged.

18,081. What are those?—I would grant divorce in cases of separation where the husband demonstrated that he did not intend to maintain his wife and children.

18,082. Desertion and refusal to maintain?—Yes. I am speaking of the poor.

18,083. Have you no fear lest that might lead to a deliberate refusal to maintain by arrangement between the parties?—I do not think it would to any extent. I am rather in favour, too, of the extension of grounds so as to give relief where a person is incurably insane.

18,084. Insanity and desertion coupled with refusal to maintain?—Also cases of convicts; the people who have served long terms of penal servitude, and where imprisonment has been frequent. But I think one has to be careful, because I have found cases of men who have previously lived quite correct lives, and who have been sent to imprisonment, say for forgery, for a long term of penal servitude; and it has occurred in my

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experience that the man's tastes have been very simple and the wife's very extravagant, and it is sometimes an attempt to meet the extravagant demands of his wife that has driven him into this crime that has landed him into prison.

18,085. Have you considered the reforming effect on the prisoner of the idea that he will have a home to return to, and that the wife is waiting for him?—Yes; for that very reason I would not like to see the grounds extended to cover a term of penal servitude where it is the first offence. Sometimes a man is sent to a term of penal servitude for an isolated offence, and in those cases one finds the heaviest part of the punishment has been the fear that the wife and children might be suffering at home, and the man has made up his mind when he comes back he will do better, and he has done better in many cases, and the regard and solicitude for his wife and children and the helping hand given thus is an important factor in the man's reformation.

18,086. Then would you say a certain number of convictions?—I would.

18,087. You would make a numerical limit?—Yes.

18,088. It is rather difficult, is it not?—I am afraid it is rather difficult, but I think there is a distinction quite understood by judges and recorders and stipendiary magistrates. There is a certain type of man who is always in mischief, and never intends to do better. It is true very few of them are married at all; perhaps five out of six of the habitual criminals are unmarried, so perhaps they need not be considered much.

18,089. But a certain number of imprisonments should entitle a wife to a divorce if she is so minded?—Yes, I think so.

18,090. And the judge or the recorder who had to give the sentence which he knew would take him over the line would be aware that he was not only sentencing the man to a term of imprisonment, but was in fact pronouncing a decree of divorce?—Yes, there are very few cases of that kind in my experience, but just a few. Most convicts, as a matter of fact, are unmarried.

18,091. And, on the whole, you think separation orders work very well?—I do.

18,092. We have had suggestions made by some that it would be a good thing to make adultery a penal offence. Has that ever occurred to you?—Adultery, in my experience, is not common.

18,093. Except in this submerged tenth?—Yes; when I say not common, my view would be quite different, perhaps, from the view of many witnesses that might come before the Commission, but I think Sheffield is notoriously a city with a good name with regard to the small proportion of people —

18,094. That, on the whole, the marriage tie is more regarded than in other large towns with a large poor population?—Than in some others.

18,095. (*Lord Guthrie.*) You told us about the case where wives would maintain idle dissolute husbands, and endure a good deal from them, and you attributed that, as you expressed it, to their having the fear of God in their hearts. There is also this, is there not, that amongst that class women seem to think it is their duty to endure what a man would not endure for a moment from his wife?—Yes, and I am afraid a man endures from his wife similarly a great deal that people in the higher station would find difficult to endure.

18,096. Do you find that the old view of the position of women as little better than beasts of burden still survives?—I have not found it.

18,097. You do not find now that women, owing to the change of views, will not endure from their husbands what they used to be quite ready to accept as part of their providential lot?—I am afraid I am not old enough to go so far back, but I am one of those people who believe that things have not got so much worse than they used to be. I think there has been a considerable improvement. I get that from men 40 years older than myself whom I have had the privilege of knowing, and who have given me good reasons for taking that view.

18,098. Improvement in what way?—Speaking generally, homes are better furnished, rents are higher, and people who used to be content with a miserable

squalid dwelling, now go in for something better, and it is better furnished, and more pride is taken in the house and so on. In Sheffield, you get some of the cleanest homes in England, though the town is the smokiest—and some of the dirtiest; and when men come home and find women not tidy, and the home not tidy and the women gossiping, that is often the cause of quarrelling; then I think that leads to separation orders.

18,099. In matrimonial troubles, do you find that drink is an important factor?—Very.

18,100. And I suppose you would anticipate that as the habits of the people improve in that matter so would the matrimonial conditions also improve?—Certainly.

18,101. And if, as we hope, that question will largely be solved, there would be less and less room either for separation or divorce?—Quite so.

18,102. We are told by an eminent authority that if drink could be got rid of as an element in family life that the Divorce Court might be really shut. What do you say to the separation orders? If you could eliminate this element would it largely affect it?—Very largely, though not to the extent that has been suggested.

18,103. But very largely?—Yes, and I think almost exclusively with regard to the more serious reasons in the desires for separation.

18,104. Reference was made to the lodger system. We are all agreed that there are great dangers connected with that, but you cannot abolish it?—No.

18,105. It is bound to go on?—Yes.

18,106. And you allude to an improved moral tone of the people making safe what is necessarily attended with great risk?—Yes.

18,107. But I suppose in many of the lodger cases the fault is not always on one side. The husband's failure to be the companion of his wife often has a great effect in throwing the woman into the hands of the lodger?—Quite so.

18,108. Supposing on the question of crime that Sir William Anson asked you about, that you confined it to the cases where, as you know now, a man can be tried and convicted for being an habitual criminal—apart from any particular offence—would that meet your view—to limit it to cases where men had been convicted separately of being habitual criminals?—Yes, I think it would.

18,109. And you consider that in such a case the interests mainly to be looked to are not the man's, but the wife's and children's?—Yes, I think that is a sound view.

18,110. (*Judge Tindal Atkinson.*) I understand you to say that it is the difficulty of getting a remedy amongst the poorer classes that makes them believe in the sanctity of marriage?—I did not intend to say that.

18,111. Well, that they looked upon marriage as more binding because they could not get it dissolved. I did not quite understand you?—No, I think there are a certain small number among the poorer classes who are respectable, who, more than anything else, perhaps, are deterred—or have cause to take a high view of marriage, but whose view is not really very high; it is something perhaps more of a superstition than anything else, but there is no real religion, and I think their view has some influence on their lives. I think it might affect those cases.

18,112. Then I was wrong in supposing that you meant that want of facilities made the people think the marriage tie was more binding?—I think if divorce were granted, and it became a common thing that in this street, and that, and the next, women were being divorced, a new view would come into their minds.

18,113. A new view of marriage?—Well, I think they do not think much about divorce at the present, and, I think, if people feel, "well marriage is not quite what I thought it was, but I have to make the best of it," that they very often come to make the best of it, and a very good best too.

18,114. That would apply if the Act of 1857 were repealed; then society would be better all through?—I suppose that is the logical conclusion.

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[Continued.]

18,115. Then you said something that touches me, and that is about the dignity of the county courts. You know we are robed in just the same way as Lords Justices are?—Yes.

18,116. Perhaps it would add to the dignity of the court if they robed in scarlet on divorce days?—No, I am not condemning the judges with regard to any lack of dignity, but the people who frequent those courts.

18,117. (*Mr. Brierley.*) With reference to one question put to the last witness with regard to separation orders. Have you formed any opinion whether it would be desirable to make them temporary in the first instance?—I do not think it is necessary to make them temporary.

18,118. Do you think there would be any advantage in it, or do you think it would be a disadvantage. The last witness said he thought it might be a disadvantage—that the parties would feel that they must remain apart until the expiration of the period?—I think I would prefer the last witness's suggestion of referring these cases to some voluntary agent of the court. I would not give that work to the probation officer, though he is often the same person as the police court missionary, but I do not think the probation officer's duties should include any sort of private detective agency work—making inquiries, and so on—and I should prefer they were maintenance orders rather than separation orders.

18,119. Would it be an advantage that the court should have absolute discretion to review its order—either to alter or discharge it?—Yes.

18,120. That at present it has not got; but do not you think there would be a great advantage if there was an absolute discretion, on the application of either party,

in the court to review its order?—I think it would be very desirable.

18,121. That, you think, would be a more desirable method of dealing with the matter than granting separations for a limited period in the first instance?—I think so.

18,122. (*Sir William Anson.*) Might I ask a question as to the necessity for the intervention of a solicitor. I see you say 402 applications were not proceeded with through lack of means to instruct a solicitor. Is it usual to employ a solicitor in cases where separation orders are made?—It is very usual, and it is a very common idea—very frequently quite a delusion, but still it is an idea—that people, however good their case may be, will not have much chance of getting an order unless they can employ a solicitor; because very frequently the husband would employ a solicitor, but he would not provide his wife with the means to pay a solicitor.

18,123. So if the one finds a solicitor and the other cannot, the one that cannot thinks it useless to go on?—Yes.

18,124. Do you think that is a local feeling or universal? It is not so in my small experience?—I have no means of knowing. Obviously the wage-earner can employ a solicitor in a case like that, and his wife, whom he is keeping money from, perhaps, cannot possibly do it.

18,125. (*Chairman.*) There is no means of getting an order for costs against him until the hearing?—No.

18,126. Do you know if solicitors who appear for the wife are allowed to reply?—I think so in our district.

(*Chairman.*) Thank you very much for your valuable evidence.

Mr. JOSEPH EDWARD BLADON called and examined.

18,127. (*Chairman.*) What is your position?—I am a police court missionary and probation officer for the two Hartlepoons. That is West Hartlepool and Hartlepool.

18,128. And there you act as police court missionary?—Yes, and probation officer.

18,129. Is that a duty in connection with the Established Church Society?—Oh, yes; it was started by the Church of England Temperance Society although it is run now by a local committee.

18,130. And how long have you been engaged in that work?—Ten years; nine years at Hartlepool.

18,131. May we take it that your duties are similar to those of the last witness?—Yes.

18,132. Now the questions: whom were they supplied to you by?—I really forget, my Lord.

18,133. I mean, they are not framed by the secretary?—No, they are exactly the same questions.

18,134. Were they sent you by the secretary of your own body?—Yes, they were; but I cannot think of the name.

18,135. I think it might shorten matters if I were allowed to take the questions as read and take your answers, if the Commissioners will kindly follow. To the first question about demand you say, "(a) No" and "(b) Yes, an insignificant number." Can you tell us what proportion or what number this is intended to convey?—I think I have had about four people mention to me about divorce during the nine years.

18,136. Of what order of people are those?—More of the lower middle class, but they have not really been very keen about it.

18,137. In what way have they brought it before you?—Well, a deserted wife; I have been talking to her; I have come in touch with her perhaps through her boy or her girl getting wrong, and she has been a deserted wife a number of years, and she has mentioned it casually, not with the idea of going in for it.

18,138. Do the people you deal with realise or not that they can get no divorce?—I do not think they trouble themselves, my Lord.

18,139. Now the next question, No. 2, is as to the expense, and the answer is, "Yes. Very few." What does the very few amount to?—I think it is a very few

I mention that are really prevented going to the Divorce Court owing to the expense.

18,140. Then question No. 3; that is a question about leading to unlawful connections, and your answer is, "No. The unlawful connections would continue" (even though divorce was obtained cheaply) as at "present." Would you be good enough to explain what is intended to be conveyed by that answer?—Well, it is really a very difficult question and a very large one, my Lord, and I did not fully grasp the thing before I answered it. But what I understood it to be was this, that though men deserted their wives owing to adultery or wives left their husbands owing to adultery that the adultery would continue though a divorce were granted.

18,141. I am afraid that is hardly what it means. We had better read the question, and if you do not mind dismissing from your mind what you have written down and give us your view I should be glad. "Does the fact that divorce is not allowed on the ground of desertion only, or on the ground of the husband's adultery only, lead, in your opinion, to unlawful connections being formed by persons who, if the law allowed divorce to be granted on these grounds would be entitled to claim divorce. If so, to what extent?"—I say no.

18,142. Then would you explain that part that relates to the unlawful connections?—I am afraid I cannot.

18,143. Are there unlawful connections?—Yes.

18,144. What has been productive of those?—Desertion chiefly.

18,145. Do you mean then that unlawful connection is on the part of the wife?—No, on both sides.

18,146. To what extent have you found that prevail?—Not very much.

18,147. Question 4: "If the law were altered in the manner indicated in the last question (the obstacle of costliness of proceedings being also removed) would the effect be, in your opinion, to loosen the sense of the binding character of the marriage tie amongst (a) the poor and (b) the lower middle classes." Then your answer: "(a) Certainly; (b) Certainly."—Yes.

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[Continued.]

18,148. Question 5 is practically that cheapening divorces and so on, would tend to immorality—"It would tend to greater immorality in time among both classes." 6, the reply will show itself, I think: "In most cases if the separation order continues in operation for a long period its effects are bad. Amend it by supplementing what the husband is ordered to pay, if the case is such that the magistrates are justified in granting an order and the allowance made is insufficient to maintain the family, as this will save the woman from either going on the streets or from being forced to go back to a brutal husband." What do you find with regard to the effects as to separation orders?—I find that a great number go back to their husbands, but if the thing remains in continuation for a long period unlawful connections are formed on both sides. That is my experience. I have come across one or two cases. I came across a case some time ago; a man and wife had been separated about 12 years, and the man was living with a widow, and he told her all kind of stories, that he was a single man, and all that kind of thing, and she believed him. I happened to be taking his boy to the same home to lodge with the same woman; I thought I would use the boy as a means of getting the husband and wife together. I got the boy into the same lodge, and got him work at the same colliery. I told the widow—she asked me about him—and I told her the truth, and I also explained to the husband that owing to his deserting his wife and failing to maintain her we should advise her and help her in getting out a warrant for his arrest unless something was done. That was the means of saving the widow who got into connection with the man, and also of bringing the man and wife together; and they are living together happily now. I find that a great number of these married people get back again together. They have a short tiff, and they come and tell me a very sad brutal story, and sometimes I use expressions that would not be thought very complimentary to the husband if he heard them, and a fortnight after I see them arm-in-arm down the street.

18,149. Do you think it a good thing for them to get these orders at all in the first instance in these cases?—I think so. I think while the blood is up it is as well for them to be parted.

18,150. Would it not be better to give the magistrates some discretion as to the length of order?—Yes, I should say 12 months, or six months at least; and then get the order renewed. It would give the magistrates or the police court missionary the opportunity of bringing them back together again at the end of that time.

18,151. It would amount to this: that a magistrate would put a temporary order in the way after a small tiff; and where it was really serious they would renew it?—Yes.

18,152. How would you treat those cases from the divorce point of view where it became a permanent separation?—Well, myself, I do not think I would grant the divorce unless adultery or permanent desertion is proved. If a man maintained his wife and the children I should let it continue.

18,153. Then question 7?—I should like to say I have met so many poor wives with children who have a maintenance order against the husband, and they have not been paid anything for a week, or a fortnight, or a month, and they have had to maintain and struggle on with their children. I do think something ought to be done in that case.

18,154. Well, will you suggest the something?—I should suggest fixing either an official or someone to whom the money should be paid or who should look after the money and be the agent to transfer from the one to the other. I think that is very important because the money is paid in a most lackadaisical way, and very often a poor wife has to starve. I think somebody ought to be appointed to see the money is paid by the employer or the man.

18,155. Do you think the police court missionary would be the right person?—Yes, I think so.

18,156. Has he an official station in the court?—Yes.

18,157. He is not strictly an official?—No; he is on sufferance as a police court missionary.

18,158. Yes, unless he is also probation officer?—Yes.

18,159. And then as to those cases where a divorce could be claimed but for expense. Reply, "Eight per cent." with regard to husbands and "six per cent." with regard to wives?—Yes.

18,160. Eight per cent. would have got a divorce?—No, eight per cent. of men went wrong and six per cent. of women. That is what I mean to convey.

18,161. But that is not the question. The question is: "In what proportion of cases of applications for separation orders that have come under your notice have you had reason to think a divorce might have been claimed had the parties been able to afford the expense?"—Yes.

18,162. And "In what proportion of such cases have you had reason to think that adultery (whether openly charged or not) was a factor?"—I should transfer that back, and say in the case of women there are six per cent. go wrong and give their husbands reason for claiming a divorce.

18,163. Do you mean six per cent. go wrong without the orders?—Without the orders.

18,164. Six per cent. of what?—Of the town; of the population.

18,165. Six per cent. of the population go wrong by committing adultery?—Yes, in these cases of separation and maintenance orders and desertion.

18,166. Do you mean six per cent. of the whole population of the town?—Oh, no.

18,167. You mean six per cent. of the cases that come up?—Yes, exactly.

18,168. Go wrong because of what?—They would be able to claim a divorce in six per cent. of these cases. Six per cent. of the men, and eight per cent. of the women could claim divorce.

18,169. Then question 8: "In what proportion of cases of applications for separation orders which have come under your notice has the application been withdrawn or no order made in consequence of reconciliation?" and your answer is, "20 per cent." Then question 9: "In what proportion of cases of separation orders which have come under your notice has the order been superseded at the instance of the parties, reconciliation having been effected?" Your reply is, "50 per cent."—I should like to alter that to 70 per cent.—seven out of every ten.

18,170. Then your evidence is much in accord with what we have had already that a very large number lead to reconciliation later on?—Yes, seven in every ten.

18,171. Then what happens to those where they do not get reconciled? What does 10 per cent. mean there?—That in the case of men 10 per cent. go wrong where the separation order continues for a long time.

18,172. And eight per cent. of the women?—Eight per cent. of the wives, because the wives have to keep their eyes open, because if they are separated from their husbands and they go wrong, and the husband discovers it, he can get the maintenance order quashed.

18,173. Then the next is: "What are the causes of these applications?" and the answer is, "Drunkenness; early and forced marriages; sensuality; incompatibility of temper; immorality and laziness. (I have put them in order—drunkenness the greatest, and laziness the least)"—Yes.

18,174. 12 is as to the courts. The question is: "Would a county court, in your experience, be a more acceptable tribunal for matrimonial differences than a police court in the case of (a) the poor, (b) the lower middle classes?" and you say, "Yes, although I fear it would lead to an increase of such cases. The ordeal of going through a police court is a deterrent." Then as to publication, you say the reports exercise a corrupting influence, and publicity does not act as a check?—No, I would publish the facts of a divorce; I would not put in the details.

18,175. I should just like to go back to 12. If a tribunal were instituted locally, what would your

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[Continued.]

experience lead you to say was a proper tribunal in all these cases?—Oh, the county court.

18,176. (*Mr. Brierley.*) With regard to your fourth answer, you say if a divorce were allowed for desertion, or on the ground of adultery, that would have the effect, in your opinion, of loosening the sense of the binding character of marriage. Have you any grounds for expressing that opinion, or is that a general opinion you have formed?—That is my general opinion.

18,177. Of course, in a sense, it must loosen the sense of the binding character of marriage if you add any grounds for dissolving it, but do you mean it would lower the estimate of the proper standard of duty between husband and wife?—I do.

18,178. Have you ever considered this, that if it was brought home to these people that the law was that a man who committed adultery in this way was no longer worthy of being called a husband, and was no longer worthy of having the custody of his children, that it might possibly have the opposite effect—of raising the standard?—It might, yes; I quite see it might.

18,179. There is that possible effect is there not?—Yes.

18,180. At present a man can commit adultery practically with impunity?—Yes.

18,181. And the woman is bound to him?—Yes.

18,182. Is it not possible that the effect of giving a woman the right to, and facilities for exercising that right to divorce might tend to raise the standard?—It might, but I would rather appeal to the spirit of forgiveness than the spirit of the law. I have known men who have had bad wives and taken them back time after time off the streets and out of prison—and I should rather appeal to the spirit of reconciliation than the spirit of separation.

18,183. (*Lord Guthrie.*) With regard to what you have just mentioned, when a husband with children

takes back his wife off the streets time after time, do you think he is acting in the interests of his children in doing so?—I believe that is his idea.

18,184. Is it yours—a drunken wife who has been again and again on the streets as a common prostitute. If the husband is so lost to all sense of what one would have thought propriety, in the interests of his children do you think that a desirable thing?—I do not think a man realises that she has gone so far as she has.

18,185. But supposing she has, would it not be much better he should be in a position to divorce her? I am talking of the interest of the children and of the State?—No, I do not think so.

18,186. (*Mrs. Tennant.*) You say in answer to question 6 that you would like to see the separation order system amended by supplementing what the husband is ordered to pay when an insufficient order is made. From whom do you suggest that supplemental sum should come?—I should say from the rates or the Poor Law authorities.

18,187. (*Mr. Spender.*) I think you said, did you not, that in the case of separation orders which have become permanent you contemplate two stages; first a temporary separation order which would sift the cases, and then a permanent one for the aggravated cases, and I think you said you would go on to grant a divorce in the latter case if there was permanent desertion and refusal to maintain?—Yes.

18,188. That would be an extension of the grounds of divorce?—Yes.

18,189. And in those cases, as we are thinking of the poor, would you grant a jurisdiction suitable to their means?—Yes, I think in those cases the county court should settle it.

18,190. You would grant jurisdiction in the county courts for these extended grounds of divorce?—Yes.

(*Chairman.*) Thank you very much for your evidence, Mr. Bladon, and the assistance you have given.

Adjourned for a short time.

Mr. JOHN PALIN called and examined.

18,191. (*Chairman.*) Are you one of the police court missionaries?—Police court missionary and probation officer.

18,192. Where?—At Middlesbrough, Yorkshire.

18,193. What is the population you have there?—About 105,000.

18,194. Your proof consists of answers to some questions which were sent to you?—Yes.

18,195. Whom by?—The Archbishop of York.

18,196. They are the same questions that we have had before, I believe?—Yes.

18,197. I will take the questions as read so as to avoid recapitulation, and take your answers, if you please, and then we can ask you some questions upon the answers. The first one is with regard to whether there is any demand for greater facilities for divorce, would you kindly read your answer?—Do you mean among the poorer or middle-classes?

18,198. Both?—There are demands for greater facilities for divorce.

18,199. Would you read your answer?—"If there were greater facilities for divorce amongst the poor and lower classes, there would of course be greater demand. Under existing circumstances, the expense attached to divorce proceedings being so great, many of these poorer people look upon it as something entirely beyond their reach."

18,200. To what extent have you found that?—Well, there are very few people who dream of getting a divorce simply because they cannot afford it. The lower order of the poor seldom think about a divorce.

18,201. Is that because they know they cannot get it?—Because they know it is entirely beyond their reach.

18,202. To what extent has this been drawn to your attention?—Well, in almost every case.

18,203. I was dealing with the cases a little above the very poor?—The weekly wage-earner and artisan.

There are cases where these people, if greater facilities were offered for divorce, would endeavour to obtain it.

18,204. Are you able to tell us to what extent that would be so?—Well, one can scarcely give numbers.

18,205. Does it frequently or infrequently come to your notice?—Not very frequently.

18,206. Then No. 2 is on the same class of point; perhaps you would read the answer; we have the question?—"There are cases where people are living unlawfully together, who, if they could afford a divorce, would marry again; in my opinion, the majority of the lower classes are indifferent on the subject."

18,207. Can you tell us to what extent you have come across cases of people who are living unlawfully together, who if they could afford a divorce, would marry again?—In many cases. One can scarcely quote figures, because my experience takes me over a lapse of 21 or 22 years.

18,208. Have you been in that work for that length of time?—A police court missionary 13 years, and the rest of the time a slum worker.

18,209. Would you say to what extent this unlawful living together prevails?—To a far greater extent than the public know. In one town where I was working in the north I found in one street of 50 houses seven couples living an immoral life together.

18,210. Can you tell us at all what the circumstances that led to that were?—Well, men and women seem to get associated together. A man meets a woman in the street; he makes her acquaintance; takes her to live with him; or a woman and her husband quarrel and the woman leaves the husband, and the husband goes and lives with another woman; and sometimes the wife will do the same.

18,211. Then Question No. 3?—"This, to my mind, mainly affects the middle classes. There are persons

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[Continued.]

"leading sinful lives, who would be married, could they obtain a cheap divorce."

18,212. That is the same class of point?—Yes, almost the same.

18,213. Then Question No. 4?—"Yes, amongst the poor (whose moral standard is low) I fear it would loosen the binding character of the marriage tie. The lower middle class would also be affected in a like manner, but not to such an extent as the very poor."

18,214. Do you think if these people who are referred to in that answer could place their relationships upon a regular footing that that would tend to improve or not the state of things?—Yes, I believe it would tend to improve.

18,215. Then Question 5 relates to the effect of desertion?—"It would never do to give divorce for temporary desertion alone, the effects upon the morals of the people would be disastrous."

18,216. How would that apply to those cases which have been so much put before us of people leaving the country or going to other parts and disappearing from sight?—Well, we have many such cases, and I generally find that these men who desert their wives, perhaps for a few months or years, frequently turn up again.

18,217. What does the woman do in the meantime?—She has to either earn her own living or depend upon charity.

18,218. Question 6 is as to the separation orders?—"As about 10 out of every 12 separation cases eventually come together again, I should say the present system was better than divorce."

18,219. What do you find happen with regard to those cases?—Where they do not come back again, I am sorry to say many of them lead an immoral life.

18,220. Then Question 7. I think the answer sufficiently explains the question; would you read it?—"One cannot possibly give numbers, but of the cases which come under my notice only a few would be able to claim a divorce."

18,221. Question No. 8?—"More than half the people making application for separation after a few days' reflection, or in the event of their folly being pointed out to them, can be prevailed upon to withdraw—in fact, numbers plead for a withdrawal almost immediately their case comes into court."

18,222. That is a withdrawal of the application?—Withdrawal of the application.

18,223. 9. You have already really dealt with that?—"Ten out of every 12 live together again, many who have declared they will never speak again, are, to use their own words, 'quite happy' in a few weeks' time."

18,224. Question 10?—"Such cases, I am sorry to say, do arise—both husbands and wives—but it is a very difficult matter to state numbers."

18,225. I should like you to expand that a little, because it deals with two classes of cases. One is where there has been an unlawful connection prior to the order, and another where it is suggested the party may have lapsed after the order. Are you able to discriminate between the two?—Well, I should say 6 to 8 per cent. of unlawful connections before, and 10 or 12 per cent. afterwards.

18,226. Is that of men or women?—Women are about 2 per cent. below the men in each case.

18,227. Question 11 is, the causes which lead to this?—"Mainly a family quarrel, leading to drunkenness, assaults, desertion," and to that one might add the great evil of child marriages, and also marriages of convenience, as they are called in the north.

18,228. Have you any remedy to suggest for that last class of case?—Well, I would stipulate an age for marriage.

18,229. What?—Well, I do not know what age, but I think an age should be stipulated, and I would allow no man to marry until he could keep a wife. Many of these troubles arise through a boy taking a girl to live with his parents, or the girl taking the boy to live with her parents.

18,230. With the sanction of the parents?—With the sanction of the parents. Quarrels frequently arise; parents are apt to take the part of their own child; and as to child marriage, only last week a case came to my knowledge with regard to a child 14½ years of age—the eldest of 10 children; she expects to become a mother next month, and the parents are anxious to marry her to the boy of 17 who is alleged to be the father of the child. I have, fortunately, a hope of stopping it.

18,231. That is the result of an improper connection prior to marriage?—Yes; but it would lead on to two lives being joined together who afterwards would have a life of misery, and they might apply afterwards for either a separation order or a divorce.

18,232. Would your view be that it would be better for the State to interpose some more restrictive process about marriage before it is allowed to be celebrated?—Yes, I think so. I am glad to say many of the clergy now will not unite juveniles unless they bring a paper from their parents.

18,233. They could easily manufacture that, could they not?—I think not. I think the clergy generally verify it.

18,234. Perhaps consult the parents?—Yes.

18,235. No. 12 is as to the tribunal?—Yes, the police court would be the proper place, I should say. "The police court; if not a special day, such cases should be taken at the end of the day's business, when persons not connected with the cases should be asked to retire."

18,236. That leads me to ask you if these matrimonial cases should be heard in private?—Yes, certainly.

18,237. Would you suggest something analogous to the children's courts?—I would treat those matrimonial cases exactly as they do the juvenile court.

18,238. You think that would be generally an advantage?—Yes, and I think the police court would be a decided advantage over the county court, because if a man or woman came before the magistrates, the stipendiaries or the justices would probably know the man's or woman's character if they were offenders, whereas the county court judge would know very little about them.

18,239. The last is as to the publication of these cases?—"The publication of press reports are given too fully, and most decidedly have an evil effect on the minds of the people. The publicity of divorce is also becoming a great evil, and tends to increase, rather than diminish, immorality."

18,240. Is that only an opinion? I want to know whether you can give us anything that illustrates it as a matter of experience?—Yes, I have frequently come across young people who have referred to statements made through the press of divorce cases, and cases of that character, and I could also give cases where it had an evil effect on the minds of young girls.

18,241. To what extent have you found that?—Well, frequently. Only a little while ago I was in conversation with a girl; I knew she was going to be married, and I was speaking to her about the forthcoming event, and she said, "Oh, I am not marrying the man I was engaged to a month ago"; I said, "Whom are you marrying then?" and she said, "A man I got to know a fortnight ago," and I said, "Suppose the marriage is an utter failure?" "Oh," she said, "I will get either a separation or a divorce then."

18,242. Is there anything else you can add about that part?—No, I do not think there is.

18,243. Would you kindly go on to the next page and tell us what you have to say, the first heading which is written as a postscript?—"I have known cases where a free or cheap divorce would be a Godsend, such as a clerk, shop assistant, &c.; but how could a special law be made for the few—unless such case could be heard by local justices, judged on its merits, then recommended, if passed by local court, as a suitable and deserving case to be passed through Divorce Court free."

18,244. Does that mean you would suggest in that class of case that the magistrates or some tribunal, should investigate the case and pass it on if it thought

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it a right case?—Recommend if thought a right case to a higher court, because the local justices know most of these local people.

18,245. To what extent have you known cases such as you refer to in the first two or three words of that paragraph?—We frequently come across them. I have a case in my mind at the present moment where a young married woman was brought before the court for being drunk. She had had a life of misery with her husband. He had spent a little fortune that was left her, and she desired to go to a home or have something done for her; she said she could not live with him again. While the court was proceeding a woman was laughing and giggling at the back of the court. The woman consented to go to an inebriate home, and I took her to a home in Durham. It appears the woman laughing at the back of the court was the woman this man was cohabiting with, and they are still living together as man and wife. The woman remained in the home two years. At the end of that time she was received into a clergyman's service, and has been in service three years. A foreman from a colliery district has come forward and offered to marry this woman, but there is a difficulty in the way. That is a very hard case, and a case that appeals strongly for greater facilities for divorce. If that man and woman were not of strong mind, they might live together in adultery, as the offending husband and the other woman are; whereas if divorce could be granted in a case like that, the man would undoubtedly marry the woman, and the couple who have been living in adultery for several years would probably marry as well.

18,246. Do you think if jurisdiction were conferred so that people of that position could use it it would generally tend to shake the confidence of the people in the tie of marriage?—It would in certain classes. I am afraid with the lower order it would loosen the tie of marriage altogether.

18,247. What about the order that you would not call the lower order?—I do not think it would loosen the sanctity of marriage with them. There would be a great many applications for divorce if such a thing were passed.

18,248. What is the distinction you make in your mind between something different from the lower order and those above them?—By the lower order, I mean the men and women who herd and live together in these densely populated parts of the town. And then I would go a step higher—respectable people, the weekly wage earner and the artisan.

18,249. Have you come across any cases in which men have been living on their wives' earnings?—Many cases. We had a case a little while ago—

18,250. You know what I mean by their earnings?—Yes, I quite understand. We had a case a little while ago. The husband and wife and another man were stood in the dock charged with keeping a disorderly house; the husband was a little older than the wife, and by arrangement he had allowed his wife to transfer her affections to the other man, whom they called a "bully" up in Yorkshire. The husband was living on the prostitution of the woman, and so was the "bully." They only had one furnished room; the husband slept on the floor, and the "bully" and the man's wife slept in the bed, and the three of them were sent to prison. They had had a girl 19 years of age in that house for a fortnight. The girl was handed to my care, and in questioning the girl I found she had slept in the house also. I asked where she had slept, and she said she had slept on the other side of the "bully"—the lawful husband on the floor, the wife and the "bully" in the bed, and the girl whom they had led on the downward path was also sleeping in the bed.

18,251. Has that led you to form a view as to how you would treat cases of that character if the divorce law were applied?—Where the woman was not a consenting party, or where the woman was forced? I have known cases where the wife has been almost forced by her husband to go on the streets and earn money, and where the life on the street was distasteful

to the woman. In those cases I should grant her facilities for divorce.

18,252. I suppose she would have to get into the hands of rescue people or people like yourself before she could be put in the way of doing it?—Yes, certainly.

18,253. Now you have some suggestions to make. Would you read them?—"In my opinion a limit should be made to the number of separation orders granted to the same parties. We have people applying for a third and a fourth order; I would advise that no person have more than a second." A few days ago we had a woman come to the court and she wanted to make application for a fifth separation order; she had had four and she had gone to live with the man again. She had remained with him till she had had three more children, and then she wanted another separation order. With regard to separation orders, I think it is a very good suggestion to place them on probation for a while.

18,254. Under the eye of a probation officer?—Under the eye of a probation officer, because you would find in almost every case if some sensible tactful person intervened the man and wife would be reconciled. In our court at Middlesborough we have an admirable plan. Almost every person who applies for a separation order is referred to myself. I go and visit them in their homes. We try and get to the root of the trouble, and in cases where immorality has not taken place, and sometimes in cases where immorality has taken place, one finds with a little talk—pointing out their folly and giving them some kind advice and encouragement—that they are reconciled again.

18,255. Do you go there in your capacity of police court missionary?—Yes.

18,256. Would you suggest it should be the duty of the probation officer or the police court missionary to do that?—Either the police court missionary or the probation officer.

18,257. I do not mind who he is as long as it is compulsory?—Well, I would say the police court missionary. "I can understand a wife, perhaps ill, in debt, or burdened with a large trying family, being persuaded to give the husband another chance, especially when he appears penitent and full of promise of amendment, but after taking him back, should he fail and a second order be granted, it should be the last." Sometimes the man's wages are small, and the amount of order made against him is also small; the woman cannot make ends meet; on the man's promise of amendment she returns—after a while he tires of well doing—the family has increased, but not his wages. The woman seeks another separation, and what was a difficulty before has now become almost an impossibility, still she seeks and order.

18,258. What would you do if she took him back a second time?—If she took the man back a second time, and she applied for a third order, I would refuse to grant her one.

18,259. Whatever the cause was?—Whatever the cause was, unless it was something very, very, very exceptional. But still I would draw the line at the second.

18,260. But between the last order and the last one applied for, supposing he was guilty of something that would found a separation or a divorce jurisdiction?—Well, of course, that would alter the case altogether if the man committed some serious crime or offence.

18,261. Would you proceed?—"I would also recommend in cases of separation a place should be fixed upon where the husband could pay the money, say one evening, and the wife receive it the next, thus avoiding contact. Many parties who go together again, even after a second separation do so because the husband allows the wife no peace until she promises to give him another chance. Were the parties not likely to meet this would be avoided." We have many instances of that. Then again many of these poor women get an order, say, for 7s. 6d. a week; a woman last week had to tramp three times to her husband, who lived four miles away, and he paid her 7s. 6d. that week by three instalments. We have quite a number of cases at Middlesborough, where on the

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recommendation of the magistrates the husband will pay the money to me. I keep a separate account for each case, and then another night the wife comes for the money.

18,262. Then deal with the last point, please?—
“In the event of a cheap or free divorce, I think each case should first be tried by local justices, who, concluding there was sufficient evidence, could pass the case for hearing at Divorce Court. There would also need to be a limit to number of divorces granted, or I fear the lower order of people would be continually wanting one.”

18,263. What do you mean by that?—I mean they could apply for a divorce continually as they do for a separation order.

18,264. They would not do that, because it would be final?—Yes, but they would try; they could go and live together again—or commit adultery.

18,265. This does not apply to the different people applying, but to the number of times the same person would apply?—Yes; I had a girl the other day—I think I referred to the case—where the girl said she would get a separation if the man turned out a fraud.

(Chairman.) Yes.

18,266. (Mr. Brierley.) I do not quite understand the principle on which you say a woman should not get a second or a third order if a cause for the order arises. Supposing the husband is cruel to her and she gets a separation order, and then goes back and he is cruel again, why should not she have a second order?—I would give her a second, but not a third.

18,267. Well, the fact being that she has a second and again forgives him, and takes him back, and he is cruel again; why should not she have a third one?—I think she should make up her mind before she takes him back a third time. If after a second trial these men fail, they seldom give any lasting satisfaction.

18,268. You mean you are against her forgiving him more than once?—No, but you see many of these men will promise anything—

18,269. Yes, but you are against her forgiving him more than once?—No, she can forgive him without going to live with him.

18,270. Yes, but that does not mean much if she does not live with him again?—You see, these poor women should be protected against themselves.

18,271. I understand what you mean, but you put an obstacle in the way of her being reconciled to him and taking him back more than once?—It would make the woman more careful as to what she was doing before she went back to the man.

18,272. You see, a good many people have suggested that it is a good thing to encourage these reconciliations as much as possible?—I would not, because these poor women are very long-suffering, and only seek a separation when they are obliged.

18,273. You do not think it is always advisable that they should be reconciled?—I do not think so.

18,274. One point about the early marriage question. You say the clergymen require the consent of the parents more than they did?—Many of them.

18,275. Do you find that the consent of parents is at all an obstacle in the way of young people getting married; do not you find the parents consent to it fast enough?—Many young people form an attachment against the wish of their parents, and they go to their clergyman, and the clergyman refuses to do it without the consent of the parents.

18,276. Do you find that is often withheld?—Not often; there are cases where it is withheld.

18,277. I suggest it is rather a more stringent provision that is required to prevent early marriage?—Decidedly.

18,278. I should like to ask about the case of the boy of 17 and the girl of 14½; you prevented that marriage?—Not prevented; I advised the parents—

18,279. Well, it did not take place?—No.

18,280. Were any proceedings taken under the Criminal Law Amendment Act in that case?—Not yet; we only heard of the case last week.

18,281. Is it intended to take proceedings?—I think proceedings will be taken against the boy.

18,282. That seems to be the right way?—Yes, but they were country people and they did not know how to proceed in the matter.

18,283. It only lately happened?—Yes, last week.

18,284. (Judge Tindal Atkinson.) You object to facilities being given for getting divorce?—No, I do not.

18,285. You think facilities ought to be given?—Yes, in special cases.

18,286. But you think the police court would be the better tribunal?—Better than the county court.

18,287. That would be giving very easy facilities—to go to the police court?—I do not think so. Special days would be specially arranged, and then they would only be dealt with on the recommendation of the presiding justices.

18,288. But it would be much cheaper?—No, I would make special charges. I do not say let them go entirely free.

18,289. (Sir Lewis Dibdin.) Your plan I gather is that great care should be taken with regard to divorce proceedings, but that the court should be the magistrates' court rather than the county court?—I think so, Sir.

18,290. Do you think sufficient care is always taken now in the granting of separation orders?—Speaking for my own court, I think every care is taken.

18,291. You do not think those cases where they come two or three times over, have in fact been granted too easily?—I do not think so, Sir. They come together again very often through the woman having to go so often for her money and finding it so difficult to get a living.

18,292. Is your objection to three and four separation orders that it makes the whole process of separation orders too easy and too light?—My idea is this: if a separation order be granted to a woman and they go back a third time, they will go back a fourth, fifth, sixth, seventh, and eighth if they possibly can.

18,293. So they will look upon the separation order as a trivial order that they can get whenever they want?—Many look upon a separation as a protection they can get almost any time they like.

18,294. And that, you think, is a bad thing?—A very bad thing indeed.

18,295. That where the separation order is necessary it ought to be regarded as a very grave thing?—Yes. It ought to be regarded as something almost binding, because if a husband comes back to the wife there is generally an increase in family before they come to the court again, and then it is more difficult to grant the woman a respectable living.

18,296. With regard to reconciliation, your experience, like most of the witnesses, is that there is a very large proportion of reconciliations with regard to the number of separation orders made?—Yes.

18,297. And in some of those cases you have told us you think it would be better if a reconciliation did not take place?—I believe so.

18,298. But I suppose you have yourself promoted a great many reconciliations?—Yes, a great many, but the majority of reconciliations spoken of by myself and other police court missionaries are really where an application has been made, and the parties reconciled, and case withdrawn—really no separation.

18,299. And a great part of your work is trying to effect them?—Decidedly.

18,300. And therefore you regard reconciliation in that sense as a good thing?—Decidedly, if reconciled before separation is given.

18,301. Now we have had a certain amount of evidence to the effect that these reconciliations very frequently are not real reconciliations at all, but caused by the failure of the woman to get her money, and she is driven back?—Yes.

18,302. I am afraid you must have known of some cases?—Yes; and very often the husband gets into a lodging-house or into ordinary lodgings, and he finds the lodgings uncomfortable, and he may get into some little bit of trouble, and he goes and prays the woman to take him back, and he will say any mortal thing to attain his end.

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18,303. That does not strike one as so bad as the case you put where the woman is driven back to cohabitation by starvation?—No.

18,304. I suppose it would not be right to describe the bulk of reconciliations as cases of that sort; they are not most of them like that?—No.

18,305. And is it your experience that there are a great many *bonâ fide* reconciliations?—Yes.

18,306. I followed your evidence as to the evil of early marriage?—Yes.

18,307. But I did not gather you had any remedy that you proposed for that evil?—I should stipulate an age.

18,308. If you did that, do not you think that would create a vastly greater amount than we have now of prostitution?—I do not think so; and with regard to a youth or a man if he misconducted himself with a girl and the girl was in trouble, I would treat it as a criminal offence, and would deal with him under the criminal law.

18,309. That is a different point; take the case of one of these lads of 18, who is no doubt very unripe for marriage and cannot afford it, but he does marry?—Yes.

18,310. Suppose you get a law that made it penal for that lad to marry at 18, what do you suppose would happen? I suppose he would have connection with a woman who was not his wife, that is all?—I do not think the prostitution could be increased much more than it is at the present day.

18,311. (*Lord Guthrie*.) You mentioned a street with 50 houses?—Yes.

18,312. And seven of them contained couples living in immoral relations?—Yes.

18,313. Can you tell me in how many of these both or either were married persons?—I think it was four of the couples.

18,314. Four of the seven?—Yes.

18,315. With regard to desertion, you are against divorce for desertion?—Yes, for temporary desertion.

18,316. What do you mean by desertion?—Well, I simply mean where the man simply leaves his wife. But, of course, if it were a prolonged desertion, then I would give the woman a divorce; by desertion we speak of it in a general way in the court—a man clears off for a week or two, or two or three months.

18,317. Yes; supposing a man has gone away and remained a period of years, and has never communicated with his wife, and left her to support the children?—I would most certainly grant her a divorce.

18,318. What is your view as to the effect of drink in these matrimonial questions? Is it a factor, do you think, in a large number of cases?—A great many cases—the majority of cases.

18,319. So that if the habits of the people improved in the way of drink you would expect a moral improvement also?—If the people became more sober, decidedly.

18,320. You told us the case of the girl who said that if her marriage was a failure she could get a separation or divorce?—Yes.

18,321. She evidently did not know the law either of separation or divorce?—Decidedly not; but I give that as a proof of the ignorance of these people, and how lightly they treat the marriage tie.

18,322. But supposing divorce is granted for such causes as you mention—adultery and real desertion—do you think that would have any effect in loosening the sense of the marriage tie when they knew it could only be got for those causes?—I do not think so, not in the genuine cases.

18,323. With regard to publicity of divorce reports, you think that leads to immorality?—Yes, I believe it does.

18,324. How do you distinguish between divorce reports and the reports of criminal cases which we are told lead to crime. Would you stop them both?—I would stop them both. I would most certainly publish the divorce cases, but I would just announce them as a marriage announcement in the paper.

18,325. (*Mrs. Tennant*.) You say about 10 out of every 12 separation cases eventually come together again. Can you say what percentage of those are the

cases which come together again and again?—I should say about six.

18,326. And in those cases where the woman has been forced against her own judgment and wish to take the man back; you do not feel the circumstances are happy circumstances?—I do not think so.

18,327. Is it your experience that the maintenance order is often inadequate?—Very often.

18,328. Where the wages are those of an unskilled labourer, I suppose that must be so?—Yes, you see an unskilled labourer earns about a guinea a week; there is perhaps a family of seven and a delicate wife to keep, and the man must have sufficient for lodgings and food, or he cannot work.

18,329. That is so even if he is not—as he sometimes is, I suppose—supporting another woman with whom he is living?—Occasionally we have such cases.

18,330. You have only occasionally?—Yes.

18,331. But those are the cases in which you feel it would be better to set that woman free to marry a man who would support her?—Decidedly.

18,332. (*The Archbishop of York*.) The class you mainly deal with with regard to separation orders in police court work is the class of the casual labourer and the less highly paid workman?—Yes, the majority.

18,333. Would you say amongst that class their sense of the obligation of marriage is already very loose?—With the lower order it is very loose indeed.

18,334. Then you would say with that class of people divorce would not make them more regular in their keeping to one another than separation?—I do not think so. They seem to have no sense as to morality at all, many of them. One night last week I wanted to get a certain man and I went to the house; I knew night would be the best time, and I knocked at the door and walked in. It was an ordinary cottage, and just the one room furnished downstairs with a bed in the corner, and there were five people in that room; there was a grandmother, one son, a grandson, and two lodgers, and the woman and two of the men were perfectly nude.

18,335. With a very large number of people divorce would not include the large majority of separated persons?—No.

18,336. In your knowledge of Middlesborough and its working men, the good class of working men, have you ever heard them express any sense of grievance that divorce was not obtainable on easy terms?—Yes, I have.

18,337. You have?—Yes.

18,338. Was that an individual case?—Oh, quite a number of cases one has heard.

18,339. That would mainly be of the better class of artisan or the clerk?—The better class artisan, or the clerk or shop assistant.

18,340. You say that you do not think that class would be greatly affected in its sense of the obligation of marriage by such changes as are proposed, but that the very poor would; but I gather from what you have just said that the very poor could hardly have a looser view than they have now?—Well, I do not think it is possible.

18,341. But the class you have just been speaking of have a very high standard of fidelity?—They have a fairly high standard.

18,342. Would it not be more likely that that standard would be shaken with them where it exists than amongst the very poor where it does not?—I do not think so.

18,343. I want to ask you what you said about objecting to repeated separation orders. I quite feel with you that it is not often advisable for the woman to go on forgiving the husband again and again, but your plan would be rather to make it impossible for her to do so?—Unless it were an exceptional case. Some of these poor women are so weak that if the man went to them and displayed any degree of penitence the woman would take him back.

18,344. Might it not be said that they were morally so strong?—The majority of them are not.

18,345. I should have thought it showed very great strength. You said about desertion in your proof that the effect of divorce for desertion on the morals

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of the people would be disastrous, and then you said, in answer to Lord Guthrie, that you did not mean prolonged desertion. Have you given much thought to the problem of divorce for long desertion and its probable effects?—Well, I have considered the matter.

18,346. Have you considered that it means an exception to the only exception hitherto recognised by the Christian law?—Well—if a man clears away and the woman hears nothing for seven years he is presumed to be dead.

18,347. You would put it on that ground?—I would put it on that ground.

18,348. Do not you think people might often arrange to leave one another and not communicate?—I do not think he is much of a man if he leaves the wife and never communicates with her at all.

18,349. No, but he would not be much of a man who wished to do it?—No.

18,350. But the point is, he would in some cases, would he not?

(Lord Guthrie.) I do not think he heard your Grace's word "arrange."

18,350A. (*The Archbishop of York.*) I want to ask if you had given much thought to this problem of desertion on the point that it makes an exception to the hitherto recognised Christian law apparently, which apparently would only make exception in case of adultery?—I would consider that, yes.

18,351. You have considered that?—Yes.

18,352. What bearing has that point upon your recommendation that desertion should be included as a cause of divorce?—Well, I say as I said before, I think a man who deserts the wife whom he has promised to love and cherish, for any lengthened period—I would most certainly grant the woman a divorce if she wanted it in that case.

18,353. But do you think that is consistent with the scriptural view of it—I only want your opinion?—That is my opinion.

18,354. That it is consistent?—I will not say whether it is scriptural or not.

18,355. You would say so whether it is scriptural or not?—I would shoot half the men if I could.

(Chairman.) That would simplify matters. Thank you very much for your evidence.

Mr. JOHN CHARLES HOLMES called and examined.

18,356. (*Chairman.*) Are you also one of the police court missionaries?—Yes, my Lord, at St. Helen's, in Lancashire.

18,357. Is your work connected with the Church of England Temperance Society?—Yes.

18,358. How long have you been at work?—Just under seven years as a police court missionary.

18,359. Are you also probation officer?—Yes; I have been 18 years in mission work, but only 6½ years as police court missionary.

18,360. Have you got the same questions; have they been sent to you in the same way?—Yes, through his Grace the Archbishop of York.

18,361. So that I may shorten it by taking the answers. To the first question in both respects your answer is "No." Now would you tell us, first of all, whether there are any cases in which divorce might have been a proper relief?—Out of the number of cases that I have interested myself in during the time of my experience at St. Helen's I have only twice had divorce suggested to me by the people I have interested myself in (about 1,000) who have come applying to the magistrates for separation orders from their husbands.

18,362. Would you think that is because they have no desire, or because they know they cannot afford it?—I do not think they desire it; I do not think they have given it a thought; it has never entered their mind to obtain a divorce.

18,363. Then Question 2 is whether the expense leads to unlawful connections that would be got rid of if they could obtain relief?—Not to a very great extent. I am pleased to be able to say the unfaithful husbands or wives in St. Helen's, as far as I have come into contact with them, have been very few and very far between.

18,364. Question 3. Have you the questions before you?—Yes, I have my Lord. Might I take that with No. 10—Nos. 3, 4 and 5—they are all included in the one?

18,365. I will take it most conveniently to you?—I think if we take No. 10, it will include 3, 4 and 5.

18,366. Well, will you give us the answer and anything you wish to add?—I have interested myself in, I should think, at least 1,000 applications during the 6½ years, and I have thought it out very carefully, and I can only think of ten where divorce could have been obtained under the present laws; and four of those would be on the wife's part and six on the husband's.

18,367. Then is that the number that is contained in answering, "Am not prepared to state, but certainly not a large number"?—That is so.

18,368. And does that answer Questions 3 and 4 in your view?—Yes.

18,369. Question 5 is another point?—I think No. 7 we might almost include. I can really give you the

individual cases where I think divorce might or could have been obtained.

18,370. Is this in answer to No. 7?—Yes, this is No. 7. No. 1, the wife could have obtained a divorce on the husband's own confession in that case. No. 2, the husband could have obtained a divorce on the confession, and the result, of the wife's sin. No. 3, the wife on the confession of the husband; and No. 4, the wife also; No. 5, the husband; No. 6, the husband; No. 7, the wife; No. 8, the husband; and No. 9 and No. 10, the husband. That makes four wives and six husbands could have obtained a divorce under the present system.

18,371. If they had had the means?—If they had had the means.

18,372. Then I think, as you say, that will answer 3, 4, 7 and 10?—Then I could put them in another way, which perhaps will help us somewhat. No. 1, the husband and wife were separated and immorality followed. No. 2, the wife drank, and separation took place and then immorality. No. 3, the wife drank, and then desertion, and then immorality; and No. 4, there was no drink in that case, but just that the husband and wife disagreed. No. 5, the wife drank and a separation order was granted, and immorality followed; and No. 6, there was no drink but just a separation, and immorality followed.

18,373. Are there any other figures you want to put before us?—I think it is all with reference to those questions.

18,374. Would you then turn to No. 5, which relates to the question of what would be the effect of desertion. Before you answer, I should like to know whether your answer is based upon a case of desertion as in the Act of 1895, or a prolonged desertion?—The Act of 1895.

18,375. You think that would be a bad thing with regard to morality if it were to be turned into a case of divorce?—Yes, I do.

18,376. Following out the idea that Lord Guthrie put, I should like to ask would that be your view if the desertion were of a pronounced and prolonged character?—Well, that is perhaps the only point where I have not been able quite to decide. I have thought that where the husband has not been heard of for 7 or 10 years, and the wife has made every effort to find his whereabouts and has failed, I think that then perhaps she might be released, but only after every effort has been made, I should say, to find him.

18,377. That class of case, I might suggest, is consistent with there being no desertion at all, but a mere misfortune of some kind keeping the man?—Yes.

18,378. I wanted to know what your view would be if there was a real intention to go and intention to stop away, and that intention acted upon for several

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years?—I think it would very much depend on the woman. One woman would not think of marrying until she was quite sure her husband was dead. I know of one or two whose husbands are away and they do not know where they are, and they are living a moral life. But I only know of two of such who have come under my knowledge in St. Helen's during that time.

18,379. Question 6 is as to the working of the system of separation orders. You think it works well and should be maintained?—Yes.

18,380. Are there any points you want to draw attention to?—I think it might be amended somewhat in this direction. At the present time a woman to obtain a summons for separation has to live separate and apart from her husband. If a woman has four or five children—

18,381. I do not think you need elaborate the point; we quite know it?—Yes, it makes it very difficult to find shelter until the hearing of the summons.

18,382. You would let her get it though he was still in the house?—Yes; or I would leave it for the court to say whether the man should leave the house or not. Then I should further suggest that, instead of a month elapsing before the woman can claim what is due to her from her husband, if it could be proved that the husband had drawn a week's money—not on the wife's word only, but by some official of the court—then I think the woman should be granted a summons, and the man should be brought before the court and say why he had not paid—so often it is mere obstinacy.

18,383. You object to the month's interval?—Yes, I think that might be amended.

18,384. Any other point on the Act?—I would suggest further in extreme cases that where persistent cruelty has been proved, and perhaps the man has a list of convictions against him for cruelty or drinking, or anything of the kind, I would suggest that the court had it within their power, instead of making a separation order, that the man should be sent to prison for a term. It seems rather hard, but I think it would answer in extreme cases. I do not think the wife's word only ought to be taken; but I think if the man is known—and indeed he usually is if he is an extraordinarily rough man—to someone in the court, then the court should decide whether or not he should go to prison.

18,385. Are there any other points on the Act?—I think perhaps the granting of a separation order for a time might in some cases work well, though it really answers the purpose when the order is made, because the man and wife can go together when they think fit to do so. But perhaps if at three months, or six months in some instances, separation was ordered, and the wife was of a strong will and said she would not go to him in that three or six months, I think it would work wonders on some of the men.

18,386. Does that exhaust the points on the Act that you have in your mind?—Yes, my Lord.

18,387. Then may I pass to Questions 8 and 9, which I take together. They refer to the effect of the operation of orders being either withdrawn or superseded by reconciliation. Will you kindly read your 8th and 9th answers?—As far as my experience goes, from 75 to 85 per cent. of reconciliations are brought about by the intervention of some third person.

18,388. After the order is made?—No, after the summons is issued; and in so many cases at St. Helen's we get the case adjourned for a month; the parties are brought into court, and then it is adjourned for a month; and then during the month the missionary sees what he can do to bring about a reconciliation; and in this way quite 75 or 85 per cent. are reconciled and the case goes no further, and at the end of twelve months not 10 per cent. of those orders granted are in force. The couples have gone together in less than twelve months.

18,389. Question 11—as to the cause of all these troubles; and you put drink, neglect and cruelty; and Question 12 is as to what court, if any, should have jurisdiction; and you say not the county court?—No;

I do not know much about the county court, but people in St. Helen's look upon it as a place they have to go to settle a debt; and I fail to see where the county court judge has the experience that the stipendiary has, or a good magistrate's clerk where there is no stipendiary magistrate. I think they are much better able to deal with the class of offenders that this matter deals with.

18,390. With regard to the last question—about publication. You say you are not prepared to give an answer to that. Does that mean you have not considered it, or you have not experience enough to answer it, or what does it mean?—I think I can say this much on that. Certainly no details should be published, but just the names of those who have been divorced; and the same applies to the separation orders.

18,391. Do you say that as a mere matter of opinion, or from anything you have observed?—No, not from experience. It has not affected the people at St. Helen's very much. Divorce cases are not very often published in the local papers.

18,392. (*The Earl of Derby.*) Do you agree with the last witness that the poorer classes hold the binding tie of marriage very lightly?—No, I do not quite agree with him there.

18,393. But you do to a certain extent?—To a certain extent. That would be with the submerged tenth if that were so.

18,394. And you find there are many people living apart without applying for separation orders. Do you know of many cases?—A mutual agreement?

18,395. Yes, a mutual agreement?—Not very many; one or two only I know of in St. Helen's.

18,396. Then you talk about people coming together again. Do you think they have agreed to make up their differences, or do you think the absence of money has a great deal to do with it?—No, I rather think that they have agreed; that they have had time to think over their differences in between time, and they have come to the conclusion that their difficulties were very trifling, and they make up their minds that they will give each other another chance.

18,397. What is the class of men chiefly that come under your notice—glass-workers?—Glass-workers and chemical workers and colliers.

18,398. Many colliers?—Yes.

18,399. What do you think with regard to their morality? A man shifts a good deal from one colliery to the other?—The standard among the colliers is rather low.

18,400. That is chiefly because he shifts from one colliery to the other?—Yes, I think that has something to do with it.

18,401. Do you think there is anything in what is said—that the people come together again because the woman is frightened of the man? He has to pay the money directly after the order, you know, very often?—I do not think fear is a factor in it. Very often the wife realises that the man cannot pay the money that the court orders, and she out of sympathy goes back to him to relieve him of that.

18,402. She goes back really more because there is an absence of the money than from the point of view of doing away with the trouble?—Yes, I am afraid we have to admit that in some instances.

18,403. Do you get many cases of desertion for a lengthened period?—Not very many; perhaps half a dozen during the year, and those are chiefly brought back by a magistrate's warrant.

18,404. Do you get many cases of lunacy?—No, I only know of one case now, and that is only a temporary one.

18,405. In a case where it was certified to be a permanent lunacy, would you be prepared to give a divorce?—No, I should not.

18,406. You would not?—No, I think not. I think if either the husband or the wife were people of high character, they would not consider divorce, not whilst one or the other was living. I think that would be so with by far the majority of men and women in St. Helen's that I know of; it is a sacred tie to the majority.

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[Continued.]

18,407. (*The Archbishop of York.*) Just follow that point; speaking of a characteristic Lancashire town, is it your experience that working people of the class you have been speaking of feel that marriage is a thing that must mean a great deal of give and take, and on the whole are prepared to accept that?—I quite agree with your Grace that is so.

18,408. They do not like the idea of divorce at all?—No, I know some women who would put up with anything almost rather than come and see a missionary even.

18,409. Do you think the type of working men you are speaking of feels his class is suffering under any grievance because they do not have much divorce?—No, it has not in the least been suggested to me; not from what I have heard them talk about or from my experience from visiting amongst them.

18,410. Have you often discussed these matters with Lancashire working men?—No, I cannot say I have.

18,411. But your experience is that they do not feel very strongly about it?—No, and I do not think that they want it at all.

18,412. With regard to the amendment of the present procedure as to separations; have you considered it would be a good thing for the money to be paid to some officer or representative of the court who makes the order?—I should say, in the first instance, not. Let him pay it to the wife; but if he had been up the second or third time, and he proved troublesome about it, I should certainly say, let it be paid to the police court missionary or to the police court, or perhaps to the magistrates' clerk's office, as is often done; but I would not do that on the first occasion.

18,413. Do you say that because you think at first it would do them good to meet?—Yes, I do.

18,414. You heard what the last witness said about objecting to giving separation orders after they have been twice obtained; would you agree with that?—No, I should not narrow it down so.

18,415. With regard to desertion as a possible ground for divorce; you said you had come across very few instances yourself of prolonged desertion?—Yes, very few.

18,416. Do you think it might be the case that if men and women knew that if they went away and left no trace for a certain number of years, that they would be free, that that might lead to an increase in the number of desertions?—No, I hardly think so; I do not think it would. It is a certain class of men that get cruel and indifferent with regard to their homes and families that do this, and they are very few and far between really; I do not suppose we have more than six a year at St. Helen's where a man deserts his wife and family and has to be brought back.

18,417. (*Mrs. Tennant.*) You said, I understood, that you would give a considerable term of imprisonment to a man rather than grant this order in certain circumstances?—In extreme cases.

18,418. During that term how would you maintain the wife?—Well, that is a difficulty that is a great trouble to us as missionaries at the present time. We assist them to the best of our ability out of the money allowed us for assistance in the police court cases. But I think it is a case that might be considered by the Charity Organisation Society, or some public local relief. I think those cases might be met in that way. Certainly the wife and the little ones ought to be looked after while the husband is in prison.

18,419. I take it it is your opinion that it is only what are called the submerged tenth who do not regard the marriage as sacred?—That is so; there are a few amongst the other class, but not many.

18,420. Do you think they have ever had a chance of regarding marriage, or any other thing in life, as sacred?—I am afraid that is where the weakness lies. If we could strengthen their character—

18,421. Have their characters much chance under the conditions under which they are brought up?—Very little, if any; very, very little.

18,422. In your experience, is bad housing an influence?—Yes, I think that has something to do

with it; I think if there was more comfort in some of the homes there would be fewer visits by the husband to the public house, which would mean less unhappiness in the family at home.

18,423. But surely in some cases it is not only comfort, but decency which is lacking?—There is scarcely any decency.

18,424. (*Lord Guthrie.*) About the "submerged tenth": do you think the moral tone of the working people is improving or deteriorating, or pretty stationary?—Well, I should say it is stationary.

18,425. Not getting worse?—No, I would not like to say that.

18,426. Is the "submerged tenth" proportionately increasing with you or not?—I should say rather on the increase in St. Helens.

18,427. Those that you would class as such?—Yes.

18,428. Amongst what section of workers?—Labourers and casual labourers.

18,429. Unskilled?—Unskilled labourers.

18,430. (*Sir Lewis Dibdin.*) You were speaking about desertion. I gather you do not have many cases of any sort of desertion at St. Helens?—Not a great number of desertions; persistent cruelty. Sometimes a man will go away from his wife for a week and get lodgings, or stay at his mother's or a married brother's or sister's, when they have had a quarrel, and then the wife comes and gets a summons for desertion.

18,431. But I think you said not more than six cases in a year at St. Helens of that sort of desertion?—Yes, when they go for a long time.

18,432. Then I suppose I am right in assuming you have not personal experience of many cases of long-standing desertion; I mean such cases as a man going away to America and never being heard of again?—I only know of one or two. In one case the woman is living with another man, and in the other case she is not.

18,433. And where that is so they are very hard cases?—Very hard, and very difficult to deal with.

18,434. I did not quite understand your evidence about reconciliations with regard to the allowances. I thought you said that the woman sometimes comes back to the husband out of sympathy, because she knows that he could not really afford to pay the allowance?—Yes; she does come to that decision at times.

18,435. When a man and wife have got that far, they are not far from sufficient kindness between them for a *bonâ fide* reconciliation, are they?—I quite agree.

18,436. They are well on the way?—Yes.

18,437. That is not quite the case Lord Derby was putting to you. He was putting the case where the woman is forced back to cohabit with her husband by starvation, because she does not get the allowance and it is inevitable. That seems to be a different case?—Yes; of course that is one of the most difficult cases we have to deal with.

18,438. First of all, have you many of them?—No, not many.

18,439. Well, how do you deal with them?—Well, we have to send the man to prison, and then we have to hand the people over to the Poor Law authorities, with what assistance the missionary can give as well. That is how I deal with them at St. Helens.

18,440. And there are cases that go out of your ken by reason of the parties coming together again—the wife forced into it, as I say, by starvation?—Yes, I am afraid there are some.

18,441. But in your view not frequent?—Not frequent.

18,442. You say at the end of the year there are not 10 per cent. of the separation orders made still standing?—I think I am right in that.

18,443. Then forgive my asking a question that sounds foolish, perhaps. Supposing those had all been divorces instead of separation orders, very great mischief would have ensued, would it not?—Certainly so. I can understand a divorce *nisi* being granted for six months; I can understand applications for divorce, and I can understand the divorces being granted; and

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I can also understand a good number of those people going together within the six months, and I can well understand many of them going together after the six months when the divorce had become absolute; and then, I think, we should have a worse state of things than now.

18,444. Do you mean that if divorces were granted in an easy way the parties would actually come together again after divorce?—I do.

18,445. With the result that any further children would be illegitimate?—Yes, according to the civil law I suppose they would. I am afraid that is what would happen in a good number of cases.

18,446. You said you do not find divorce really talked about or thought about amongst the poor?—No, I do not.

18,447. Has not it been talked about since this Commission was sitting?—I do not think it has entered the minds much of the St. Helens people. I have tried to find out, but I found they were not in the least interested in it; not the class of people that come for separations, I mean.

18,448. Is this Commission reported in the St. Helens papers?—Yes.

18,449. It has not excited any remarkable interest?—No.

18,450. You have not had people coming and saying, "This is what I have been wanting for years; when am I going to be free"?—I have never had one.

18,451. (*Judge Tindal Atkinson.*) You say there is no demand for divorce in St. Helens?—Yes.

18,452. If facilities were given for divorce, would they be taken advantage of?—I can understand it being taken advantage of by a certain class of case.

18,453. And in those cases it would be just it should be taken advantage of?—I should say not in the majority of cases.

18,454. Why not?—Unless in cases of desertion and persistent cruelty the divorce was granted. That would be the only ground.

18,455. If those cases ought to be dealt with, why should not facilities be given to enable them to be dealt with?—Well, I think it would create an impression upon the people, and they would come so freely to court; it would make them neglectful of their husbands and their homes too, I think.

18,456. But if the husband has committed those offences which justify the wife in obtaining a divorce against him, can you tell me why the facilities should not be given?—Well, of course, I go back to my religious basis for that, and I say divorce is not right, and ought not to be.

18,457. Then you object on the ground that divorce ought not to be allowed?—I would punish the man.

18,458. And the Act of 1857 should never have been passed?—That is my view. I would punish the man if his cruelty and neglect were persistent.

18,459. You say you would prefer, if divorce facilities are given, the police court to the county court?—Yes.

18,460. Because the police court has a much greater insight into the character of the poorer classes?—Yes.

18,461. The same objection would apply to the High Court, would it not?—Yes, I suppose it would.

18,462. And in a greater degree I suppose?—Yes.

18,463. And another reason you give is that people are much more afraid of a police magistrate than they are of a county court judge?—That is so.

18,464. How would you deal with those districts that have no stipendiary?—Well, at St. Helens our magistrates' clerk is as good as a stipendiary.

18,465. I am talking of the country districts?—Well, the magistrates' clerk would answer there. People come to the borough as a rule.

18,466. You think, then, that the county bench would be preferable to the county court?—It would depend very much on the magistrates' clerk.

18,467. But you could hardly legislate with reference to a particular magistrates' clerk?—Well, he has a great influence over the magistrates, and they depend very much on him.

18,468. That would be in the country districts practically handing over the divorce procedure to the magistrates' clerk, would it not?—If it became law.

18,469. (*Mr. Brierley.*) One question as to the question Mrs. Tennant asked you with regard to your desire that a man should be punished by the magistrate in the case of persistent cruelty?—Yes.

18,470. I suppose you find a woman is very averse to having her husband sent to prison?—I do.

18,471. Chiefly on the ground that she is likely to lose any support?—No, I do not think that. I have heard many women when giving evidence—

18,472. I know that is not the only ground—
(*Mr. Lewis Dibdin.*) Would you let him finish his answer.

(*Mr. Brierley.*) By all means.

(*Witness.*) I know often a woman, when she is giving evidence against her husband and asking for a separation order, will say, "Oh, I do not want to punish him or send him to prison; I only want him to leave off being cruel to me."

18,473. At present there is really a method—a comparatively simple one—of attaining the object you desire, and that is this. It is often done at the court I attend: a summons for assault is issued to the woman at the same time as a summons for persistent cruelty?—Yes.

18,474. And if the magistrate thinks fit he can be sent to prison for six months on the summons for assault?—Yes.

18,475. And the order for maintenance can be made on the other summons?—Yes.

18,476. So that in the present condition of the law the end is attainable?—Yes. The woman generally asks for a separation.

18,477. I know the readiness to forgive is very remarkable, but there is another reason that influences her, I suppose, and that is that if he is sent to prison she would lose her chance of support?—Yes, I think so.

18,478. I think a Bill has been introduced into the House of Commons this Session (I forget by whom) which provides that where the husband is sent to prison for assault on the wife it shall be compulsory that the guardians should give her outside relief?—Yes.

18,479. That would meet your view?—Yes.

18,480. It would be adequate?—Yes.

18,481. (*Mrs. Tennant.*) There is one other question I should like to ask. Would there not be an additional objection to punishment, that the wife might receive worse treatment after the husband came out of prison?—No, I think not. I have in my mind at the present time two husbands that were dealt with for assault upon the wife, and one was sent to prison for six months and the other for three months. Two or three years have elapsed since then and neither of them have had to seek protection. I cannot say they are living ideal lives, but they are managing to get along without having to call in any outside help. I think it has the effect of taming him somewhat, especially if he has not been to prison before.

18,482. And if he come under helpful influence there?—Yes.

18,483. But you can imagine a purpose of revenge. It is known that when a husband goes to prison for assault on his wife, he often pays her out on his release?—No doubt that would be so in some instances.

18,484. (*Chairman.*) You seem to be afraid there might be, if divorce opportunity were given, too frequent application for it?—Yes; well, if you were in the police court and heard some of the stories that wives have to tell, some of the excuses that they make sometimes for getting a separation order, you would better understand what I mean. Sometimes for the least little thing they will say, "Well, I will go and get a separation." Very often they are very much in fault themselves.

18,485. All I wanted to know was, was your view rather based on the notion that suggestions were made that divorce should be granted for the least little thing?—No, I did not take it exactly in that light,

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but I did take it it might be granted for desertion and persistent cruelty.

18,486. You took it it might be?—From the questions that were asked here I thought that was suggested to be the case in the future.

18,487. Neither of those would cover the light causes?—No, they would not.

18,488. If the desertion were prolonged?—And I think the power the magistrates have at the present time of making a separation order and granting her an allowance is sufficient.

18,489. What is the good of granting her an allowance if the husband has gone to America?—Of course that does happen sometimes, but not very often.

(Sir Lewis Dibdin.) Would you ask also what is the good of a divorce under those circumstances?

18,490. (Chairman.) Certainly. I am requested to ask you what would be the good of divorce under those circumstances?—You mean if he disappeared to America?

18,491. Would it give the wife a fresh chance?—Certainly it would give the wife a chance.

18,492. Then do the views you express on this depend partly on your religious views?—That is so.

18,493. Is that the view that marriage is entirely indissoluble, or dissoluble for the one cause only that at present exists?—I do not quite follow you.

18,494. Well, at present the law admits of divorce on the ground of adultery?—Yes.

18,495. Though with the wife it has to be coupled with other offences. I want to know whether your view is based on absolute indissolubility or dissolubility on the one point?—Absolute indissolubility.

18,496. Where do you get that from?—That is from my religious convictions that I have been brought up in and taught in the Church of England.

18,497. Relying on the Scriptures?—Yes.

18,498. (The Archbishop of York.) I just want to ask, with reference to what you said as to the police court. I take it you had in mind mainly there the trial of separation orders. You did not mean to imply that you thought the police court would be a good court for divorces?—No, I was thinking only of separation orders being granted.

(Chairman.) Thank you very much for your evidence.

Mr. WILLIAM LIGHTFOOT called and examined

18,499. (Chairman.) Where is your sphere of work?—Nottingham.

18,500. Are you one of the police court missionaries there?—Yes.

18,501. A police court missionary?—Yes.

18,502. And probation officer?—Yes.

18,503. How long have you served in those capacities?—17 years.

18,504. Have you before you the questions that the other witnesses have had?—Yes.

18,505. To the first question you answer in both respects, "No"?—Yes, that is quite right.

18,506. Would you tell me to what extent questions relating to divorce have come before you?—In very few instances; say, in 17 years not more than half a dozen.

18,507. What is it that chiefly does come before you?—What kind of case?

18,508. Yes?—Separation cases. I ought to say, perhaps, that I speak to about 3,000 prisoners in the course of the year, and enter about 1,000 homes, and I scarcely ever hear any mention of divorce; and that applies to the casual labourer and also the respectable artisan or clerk.

18,509. Does the crime side of matters come before you as well as separation matters?—Yes, all police court work.

18,510. Then Question 2, as to unlawful connections being formed, you say, "No. They have usually become immoral before thinking of divorce"?—Yes.

18,511. Would you just explain that answer a little more fully?—I mean one or other of the parties, the husband or the wife, has formed immoral connections before they think of divorce, and as a rule they have been relegated to their proper position in the scale in which they move.

18,512. To what extent have you found that these relationships have been formed after there has been an order?—After there has been an order?

18,513. Yes?—Well, I should say mostly with regard to the man in many instances, because the man enjoys complete freedom, whereas the wife, if she wants to retain the amount of money that accompanies the order, has to keep herself straight; and in those cases where the wife is tainted, or likely to be tainted, in making application to the bench for an order she will say she does not want the order for herself, but for the children. That of course carries the inference with it that she is not exactly straight.

18,514. The third answer is, "To a very small extent." That is the question of leading to unlawful connections?—Yes.

18,515. In the fourth answer you say, "Yes" in reply to the question about facilities loosening the marriage tie?—Yes, I think so, undoubtedly. It would

to a certain extent create a novelty. If divorce was made easy people would look upon it as a novelty and they would try it, whereas they do not think of it now.

18,516. What is your idea of its being made easy?—Well, if power was given to the county court and part of the costs paid—that is what I mean by being made easy. Or if divorce were extended to desertion, they would find the means in this country, as they do in America, for making it convenient to desert for a short period so as to obtain a divorce.

18,517. Supposing the period was as it is in Scotland—four years—what would be your view then?—I do not think then desertion would enter into it; I do not think they would adopt the grounds of desertion so largely then as they do in America.

18,518. Would you feel any danger of lessening the views of the tie if it were applied to cases where the person deserted for four or five years?—Yes, I do.

18,519. Would you say why?—Well, you see that would enlarge the grounds on which divorce could be obtained, and I hold the opinion that any extension would lead to an increase of applications for divorce.

18,520. Question 5 is answered by what you have just said?—Yes.

18,521. Then No. 6; you say the separation order courts work fairly well in Nottingham. Have you any suggestion to make with regard to improvements in that connection?—Yes; when I answered the question in that way I meant as far as the law stands at the present time; but I would suggest that the law be considerably amended in the way of separation orders. I think every attempt should be made by the magistrates to effect a reconciliation between the two parties.

18,522. Do not they do that at the present time?—Oh, no. For instance, two solicitors can come into court now and say (the magistrates know it is down on the sheet, of course) that they have come to terms over the case and all they cannot arrange is the amount of money to be paid. Well, I suggest that every case of separation (because the separating of man and wife is a very serious matter in my opinion) should be heard in detail by the magistrate; solicitors have no right to come into court and say they have arranged the case outside.

18,523. In those cases you speak of, do not the magistrates hear any evidence?—Only with regard to means.

18,524. They do not have proof that the cause is true with regard to cruelty or anything of that kind?—Only as far as the summons is concerned—the fact on the summons.

18,525. But the summons must allege one of the

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[Continued.]

causes specified in the 4th section of the Act?—Yes, that is all they have before them.

18,526. Do not they prove the causes in those cases?—No, it is admitted in the arrangement by the solicitors.

18,527. Do you say that the magistrate takes no evidence except as to means?—That is all. Another suggestion I would make would be that when the magistrates have heard the case it should be adjourned for a month, and during that month's adjournment the husband should be ordered to pay a sufficient amount of money to maintain the wife. My reason for that is that it would cause the husband to see the responsibility he was taking on himself and how inadequate his means would often be to provide two homes.

18,528. That would bring it home to him, you mean?—Yes, quite so.

18,529. Any further suggestion?—No, I think that is all with regard to that.

18,530. Then No. 7: "In what proportion of cases, where there is a separation, might there have been a divorce if there had been the means?" You say in answer: "(a) About one in 10 cases. (b) About one in 10 cases." What is that?—That is with regard to adultery being a factor. Adultery very seldom enters into an application.

18,531. You mean one in 10 cases would have been cases of divorce with adultery in them?—Yes; and I should like to point out with regard to separation order in that matter, adultery seldom enters into the application of a woman for a separation order, either separation or maintenance.

18,532. It cannot enter into it; she cannot get it on that ground at all?—No; but I mean in stating the case the woman does not say anything about the man's adultery. It is principally they ask for a separation on a charge of assault or persistent cruelty, or neglect to maintain them, or perhaps it is a bit of a tiff that has been caused between them, and then, again, interference of relations.

18,533. Then Answer 8 is, "Two withdrawn in 10"?—Yes, that is quite right, Sir.

18,534. Then No. 9: "Reconciliations after order, about four in 10"?—Yes. I mean those that have come into court. There are no statistics kept in the court about these cases, but that is the judgment I have formed from my own experience by outside work. A case never comes in court, or rather they never come back to state in court that they have been reconciled. I should say that eight in 10 are reconciled. In eight out of every 10 cases a reconciliation follows.

18,535. But I think you put it the other way round before. You mean Question 8 should be answered, "Eight in 10"?—Yes, I should say eight in 10.

18,536. Either withdrawn or the order not made?—Oh, that is after the order has been made.

18,537. No, let us get it a little clearly. No. 8 is where either the application is withdrawn or no order is made?—Yes; well, that is about four in 10—the original answer.

18,538. No; the original answer is two in 10?—Oh, yes, I beg your pardon; I am looking at No. 9. Two in 10.

18,539. Two in 10 cases are either withdrawn or no order is made?—Yes, that is quite right.

18,540. And is it right to say that four in 10 where the order has been made there is a reconciliation?—Yes.

18,541. Then Question 10 is: "In what proportion has there been unlawful connections either before the order or after the order?" "(a)," I take that to mean improper connections by husband?—Yes.

18,542. And "(b)," with regard to the wife. It is six in 10 in the first and three in 10 in the other?—Yes.

18,543. Will you separate those into cases of immorality before an order and immorality after an order?—No, I do not know that I can. I think it would be about the same. I should rather be inclined to increase them a little after the order has been made, because if the husband is determined to make it a permanent order in his own mind, then he forms immoral connections.

18,544. Can you say in what proportion he does that to cases where they are not reconciled?—I should say where there is no reconciliation effected it happens in nearly every one.

18,545. How about the woman?—Well, the woman will keep herself chaste on account of retaining the amount of money for the maintenance of the children. I have known cases where the woman has gone wrong, but it is in such cases as I have previously mentioned, when they will ask for an order for the children only.

18,546. Then, putting it generally, if the husband remains separated he goes wrong?—Yes, that is so.

18,547. But not so frequently in the case of the wife?—No.

18,548. Then No. 12—as to the courts. You do not think the county court would be a good tribunal for matrimonial differences?—No.

18,549. You say, "because people of repute do not seek a separation, and the payment would not be enforced in county court as in a police court"?—Quite so.

18,550. And as to publication. You think that publication is a bad thing, and that it is not a deterrent to immorality?—Quite so. I know of instances where amongst young folks it has done a lot of harm in causing them to pass rude jokes from one to the other about incidents that have been reported in the paper. My suggestion is that the case should be reported in the paper, that is to say, as far as all the names of the parties are concerned, and perhaps the comments of the judge, with the result.

18,551. But not any details?—Certainly not. There is one more thing I should like to say with regard to the police court. I think divorces should be obtained through the police court and then referred to the High Court, say, to the assize court.

18,552. You mean in proper cases for divorce?—All applications for divorce ought to be heard in the police court, the same as a bigamy case, and then, if there is a *bonâ fide* case, send it on to the assizes. My reason for that is that it would put all classes on a level. At the present time it is largely understood he cannot have a divorce, as he has not money.

18,553. Would not that involve poor people in great expense?—It would all depend on what money they spent on counsel. The other expenses would be paid by the State, as in criminal cases.

18,554. You mean it would be the same as a case of crime; an inquiry before the magistrate, committal, and trial at the assizes?—Quite so. I think that is the best procedure I can think of; it puts all classes on a level.

18,555. There are other points to consider there. In these cases there would be a defendant who would wish to say what his answer was?—Yes.

18,556. How would that be indicated; you must have a pleading then, you see?—Yes.

18,557. In a criminal case it is just the charge made, and the answer, "Not Guilty"?—If the wife was applying for a divorce, or the husband applying for the divorce, he would be the applicant, and counsel would make his plea.

18,558. But then if the defendant puts in the answer, "Not guilty," then notice would have to be given to the applicant of what was going to be said. It might be said: "You are as guilty as I am." I cannot quite follow that it would work with that simplicity that you think?—Both sides of the case would be brought out, and the magistrates would be able to see whether there was any case or not.

18,559. You think the husband should set up then and there what his case is?—Yes; otherwise I think the magistrates should not take any action, or there ought to be no divorce.

18,560. (*The Archbishop of York.*) Do you think that, supposing divorce could be obtained much more cheaply than it is now, or at county courts or other courts, there would be any disposition to tempt people who had quarrelled to commit adultery in order to obtain a divorce?—Yes, I do.

18,561. When you were talking about the men who after they have been separated from their wives form unlawful connections, would you say they were the

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[Continued.]

class of men who would probably sit very loosely upon a new alliance, even if they obtained it by divorce?—Yes, it would not make much improvement, perhaps, your Grace. Oh, no, they have become very indifferent altogether.

18,562. (*Lord Guthrie.*) Have you any experience of the working of the divorce laws, or of the effect of the divorce laws, amongst divorced people?—A little; not a great deal; a little.

18,563. Where?—In Nottingham. I have come in contact with two or three families where there has been divorce.

18,564. What has happened then?—I have never known any reconciliation; I have known them to form irregular alliances, and illegitimates to be the outcome.

18,565. You have not known of them re-marrying?—No.

18,566. Then what happened?—They have simply remained single, excepting one woman.

18,567. What happened to her?—She married again.

18,568. And how many other cases besides that one have you known where divorce takes place and they have remained single?—I should think about five cases.

18,569. That is your experience?—Yes.

18,570. Take the case which, I suppose, you must have come across, of a husband who has an adulterous wife. She is not only adulterous, but neglects the children, and her influence is extremely bad on the children. Has the husband any remedy at present by the law of England at all?—Not that I am aware of.

18,571. Do you approve of that?—Yes, to a certain extent.

18,572. You would not provide any remedy of any kind?—No; they take each other for better or for worse.

18,573. Even though her example were ruining the family. That is the case put. You admit there is no remedy, and you would not provide any?—No.

18,574. Do you adhere to that?—Perhaps if you went into the previous history of the man, there is some fault on his side that has caused the wife to go wrong. I have known several instances where the man has caused his wife to take to drink.

18,575. But I am saying, even although that is so, the children have not contributed to that fault?—No.

18,576. That is the interest of the State in the children, you know?—There might be some remedy found, but I am not prepared to propose or suggest any remedy in such a case. You see, in the case of drink, if the woman is willing, she can be placed in an inebriates' home, and the law ought to be made so that, without the woman's consent, it can be done if it is proved she is a drunkard. At the present time, if she is convicted three times in one year, she can be sent, but otherwise there must be her consent. I think the law ought to be altered so that the woman can be placed, when she is proved to be an habitual drunkard, apart from any conviction, in some place of detention for a time.

18,577. But I purposely said nothing about drunkenness. I put a case where there is no drink; where the woman is flagrantly adulterous, neglecting her children, and bringing them up in her own ways?—I do not know of one apart from drink.

18,578. And you have no remedy to suggest?—No.

18,579. I should have thought that you would have suggested that the husband should be entitled to apply for a separation from his wife on the ground of adultery. I thought that you would have suggested that from your point of view?—Well, you see, I am very much opposed to separations. I think it is the last means.

18,580. But take that case. Do not you think it would be reasonable? He can do so now in the High Court. He can get judicial separation on that ground. Do not you think the poor husband might be entitled in the local court at least to get separation on that ground?—Yes, I think both classes ought to stand on a level; for that reason I would give the same facilities.

I presume a man who can afford it goes to the High Court and gets protection or separation from his wife, because he has the means to do it. I would make the same suggestion over this as I made over divorce cases: that they should go through the police court, and that the State should pay all the expenses.

18,581. Are your views about divorce at all affected by the religious question, or is it on the ground of public policy entirely that you proceed?—Both.

18,582. How far do your views on the religious question go?—Well, it is a very large question.

18,583. Well, as to indissolubility?—Yes, it goes to the fullest extent that the Scriptures go.

18,584. But that is just the question. You know there are a dozen views of the Scriptures?—It is indissoluble in my mind.

18,585. Is the indissolubility for adultery only, or adultery plus desertion. Scripture will admit of a dozen grounds?—It is indissolubility; that is my view.

18,586. That would entail that the 1857 Act should not have been passed?—Quite so; because when that Act was passed it created a demand which only existed before to a very limited extent.

18,587. (*Chairman.*) I should just like to ask you one question; it may lead to another. You said you were opposed generally to separation?—Yes.

18,588. Would you give us the ground of that?—As I said before, I would regard it as a very serious thing for a man and his wife to be separated, and every means should be taken to avoid a separation. That was my reason for suggesting an adjournment. My reason for opposing separation is the same as for opposing divorce, that it breaks up the family life, and the home life has been practically the mainstay of this country, and for that reason I oppose separation.

18,589. Do you think the Scriptures justify putting asunder by separation?—No.

18,590. You would be against any interfering at all?—I should be inclined to grant separation, but not divorce.

18,591. I do not follow why you would grant separation at all?—Because it may be only of a temporary character and the way is left open.

18,592. Suppose it is of a permanent character?—As the law stands at the present time, when a separation is made, if either party opposes a reconciliation it becomes permanent.

18,593. You are against that?—Yes.

18,594. Are you against that as much as you are against divorce?—No, not quite, because, as I say, separation leaves the door open to a reconciliation.

18,595. And I gather you would have been in favour of not passing the Act of 1857?—Quite so.

18,596. Where do you get that view from?—Well, the general view of the Scriptures—not in any particular part. But when man and woman were created—

18,597. I did not want to discuss the details, but you take it from the reading of Scripture?—Yes, and I can find it in the Gospel by St. Mark and the Gospel by St. Matthew.

18,598. Do you read it exactly as the Roman Catholics do?—I do not know their reading of it exactly.

18,599. Well, they read it in that sense?—Perhaps I do, but I do not know their view of it at all.

18,600. Do you know there are several views taken on that by the Protestant Churches?—Oh, yes. I think it largely depends on the individual. Some men take a very wide view of these things, and they have a very large amount of give and take in their nature, and they are not as strict as others.

18,601. But if they are all founded on the same writing, ought not they all to come to the same conclusion?—It opens a very big question. In my view there is sufficient law to punish a man who is doing wrong.

18,602. Would you revert to the position we were in before 1857, when anyone who was wealthy enough could get Parliament to pass an Act?—I do not quite follow the question.

18,603. You are placing a very serious matter for

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[Continued.]

consideration before us. If you reverted to the position before 1857 you would leave people in the position in which only the wealthy people could apply to the Parliament, and did for 200 years or so, to get Acts of Parliament dissolving their marriage. Do you wish the country to revert to that?—Yes, I do not see any reason why we should not at all.

18,604. (*Sir Lewis Dibdin.*) May I ask a question? You do not think Parliament was right in doing that, do you?—In passing the Act.

18,605. In passing the separate Acts prior to the 1857 Act. Do you mean you are in favour of the special Acts for divorce that used to be passed, or are

you against it altogether?—I do not know anything about those special Acts that existed before 1857.

18,606. They were Acts allowing divorce in particular cases?—I do not know anything about those, as I do not know them.

18,607. (*Chairman.*) Have you ever studied the whole history of the matter?—Of divorce?

18,608. Yes?—No, my Lord.

18,609. Have you studied the writings of any of the great authorities on the question?—Only as far as the Bible is concerned.

(*Chairman.*) Thank you very much indeed for your evidence.

Adjourned.

Winchester House, St. James's Square, London, S.W.

TWENTY-EIGHTH DAY.

Tuesday, 14th June 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace THE LORD ARCHBISHOP OF YORK.

The LADY FRANCES BALFOUR.

The Right Hon. THOMAS BURT, M.P.

The Hon. LORD GUTHRIE.

Sir WILLIAM R. ANSON, Bart., M.P.

Sir LEWIS T. DIBDIN, D.C.L.

Sir GEORGE WHITE, M.P.

His Honour JUDGE TINDAL ATKINSON.

Mrs. H. J. TENNANT.

EDGAR BRIERLEY, Esq.

J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

Mr. HENRY FERRIS PIKE called and examined.

18,610. Are you a police court missionary?—Yes.

18,611. Where is your sphere of operations?—Oxford.

18,612. How long have you been filling that capacity?—Nearly four years at Oxford.

18,613. And before that?—At Dover.

18,614. Are you one of the regular police court missionaries, or is there anyone else?—No, no male missionary. There is a lady worker.

18,615. Do you operate under the auspices of the Church of England?—Yes.

18,616. I should like you to take in your hand the questions which have been submitted to you. It is in answer to those questions sent to you and the other witnesses that you have given a short statement?—Yes.

18,617. We have no statement besides the answers to those questions. We have been through these questions with several other witnesses, so we all know the questions and I need not read them. You can carry them in your mind, but I will take the answers and ask you upon them. The first question is with regard to the demand for facilities, and you answer neither amongst the poor nor the lower middle classes?—That is so.

18,618. To what extent has that matter come before you?—Particularly in connection with applications that are made to our courts for separations.

18,619. Do you get a great many of them?—Not a very large number.

18,620. What can you tell us about Oxford?—The number of applications for separations in the course of the year perhaps would be 25 to 30. I work a good deal outside of the police court, in the city, and am brought into contact with a great many. I am consulted frequently in matters that do not come directly into the police court.

18,621. You have the cases of crime to deal with, too?—Yes.

18,622. Has this subject of divorce come up?—Not very much; it does occasionally.

18,623. In what class of case?—Amongst the poor, cruelty and intemperance.

18,624. Those are not grounds of divorce?—No; one hears it spoken of.

18,625. The second question is as to whether unlawful connections are led to, and your reply is: "In some cases, certainly, but not to any extent"?—No.

18,626. To what extent is that so—unlawful connections in consequence of preventing proceedings?—I think the proportion is very small, in my experience.

18,627. Can you tell, out of the number of cases you have had, how many have led to unlawful connections through the expense of proceedings?—I should think, speaking from my experience, about 5 per cent.

18,628. Of the number of cases you mentioned before?—Yes.

18,629. Upon Question 3, will you first read the answer?—"In some cases, especially where a woman deserted is left with children, or a man left in the same way, and engages a housekeeper."

18,630. Will you explain what you indicate by that?—What I mean is, when a woman is left with children she sometimes finds herself in a very difficult position, and she is tempted sometimes; some man offers to take her and the children, and she yields; and in the case of a man left in the same way by his wife, he engages a housekeeper.

18,631. Do you find that those cases occur more on the side of the man than the woman?—More on the side of the man.

18,632. Why is that? Can you give any explanation?—I am afraid I cannot.

18,633. Question 4 is: "If the law were altered in the manner indicated in the last question (the obstacle of costliness of proceedings being also removed), would the effect be, in your opinion, to

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[Continued.]

"loosen the sense of the binding character of the marriage tie amongst (a) the poor, (b) the lower middle classes?" Will you give the answer to that?—The more facilities that are given for divorce, the more will the binding character of the marriage tie be loosened, especially among the lower middle classes.

18,634. Why have you come to that conclusion?—I think it would lower the whole standard.

18,635. Is it high at present?—It is, certainly. I think the standard is fairly high amongst the poor and the middle classes. They certainly think that.

18,636. No. 5 is: "If divorce were made cheap and were allowed in cases of mere desertion, would the result, in your opinion, tend generally to the promotion of morality amongst (a) the poor, and (b) the lower middle classes, or in an opposite direction?"—No, I think that would be quite the opposite.

18,637. Question 6: "Is the present system of separation orders made by magistrates, in your opinion, working well or ill; should it be maintained, or abolished, or amended; if amended, how?" Your answer will explain what you have to say about that?—Yes. I have more to do with separation orders than divorce. In no case should a separation order be granted until full inquiries have been made by some competent person. With reference to this question, I should like to say that it is the invariable practice at my court, when an application is made, to adjourn it for a week to enable me to make inquiries, and, if possible, effect a reconciliation. I am glad to say that has been effectual in two cases this week. Out of many applications made during the past two years at the City Police Court only 10 separations were granted, two of which were for habitual drunkenness—one a husband and the other a wife.

18,638. Can you tell me upon that whether you would advise the orders by the magistrates being made for a temporary period?—Yes, certainly.

18,639. Will you explain what has led you to that view?—My experience in dealing with these people, whenever a man or a woman, in the majority of cases it is the woman who applies.

18,640. She is the only one who can apply, except in the case of drunkenness?—Yes. When she applies for a summons against her husband with a view to a separation, I ask the magistrates not to grant the summons till inquiries have been made. They invariably do that, and in the majority of cases they never hear any more about it. But if, when I have inquired into it, I feel that it is a matter that should come before the court, then I ask, when the evidence has been heard, but before they determine the case, that they should adjourn it for a month, or even longer, binding the offending party over to keep the peace for that time.

18,641. They must be assault cases, I take it?—Yes; it is intemperance and assault in nearly every case.

18,642. They would not be able to bind over, I take it, for mere desertion?—No.

18,643. The next question is: "In what proportion of cases of application for separation orders which have come under your notice have you had reason to think a divorce might have been claimed had the parties been able to afford the expense of a suit in the Divorce Court? In what proportion of such cases have you had reason to think that adultery (whether openly charged or not) was a factor? If possible give the number of cases known to you personally, and the period of time covered." What is your reply?—During the 21 years that I have been engaged in this work, hundreds of cases have come under my notice. Adultery frequently is a factor. One cannot always find out what the actual causes are.

18,644. Are the "hundreds of cases" you mention the hundreds of cases that have come before you on the question of separation?—Yes.

18,645. To what extent have you found adultery a factor—you say "frequently"?—The suggestion is made that either the man or the woman has committed

adultery, but if it came to the test there is not always absolute proof; there may be a suspicion.

18,646. We are told, and I think you agree, too, that many of the orders end in reconciliation?—Yes.

18,647. To some extent they do not, and the parties remain separated?—Yes; in some they do not become reconciled.

18,648. What happens to those cases?—They drift apart, and in nearly every case I think the man commits adultery, and in some cases the woman; more frequently the man I should say.

18,649. Have you formed any view as to why that comes about?—The absence of any controlling influence in the life of the man and woman—religious influence, to keep them straight. They drift.

18,650. Have you any remedy to suggest for that?—Only to make the separations more difficult to get. I think in every case there should be an effort made to reconcile the parties—not simply one effort, but to continue it.

18,651. What is to be done if that efforts fails; say, in a case of gross brutality or prolonged desertion?—It is extremely difficult to know what is to be done. Of course those cases are rather exceptional in my experience, in the small area I am working in.

18,652. It seems a sad thing that when they get permanently separated you should find the man generally living in adultery, and the woman sometimes?—It is a sad thing.

18,653. What is your remedy?—By bringing personal influence to bear on the man, and also the woman. In the case of a woman I always put them under some good ladies, and keep in touch with her for years, as far as possible.

18,654. Do you think it right in those cases that the complainant should have a divorce?—I am not in favour of divorce.

18,655. On religious grounds?—Yes.

18,656. Suppose you could eliminate that consideration from your mind, would you consider the best remedy then, where the parties are permanently separated and where those connections are formed, would be to give a divorce?—It is difficult to eliminate it from one's mind, because it is so strongly rooted. I do not think I would under any circumstances.

18,657. How would you deal with cases, if you had them, where the defendant has gone to America and is not heard of again?—I am afraid I have had no experience of that.

18,658. Have you had any case at all?—No, I do not think so.

18,659. Then Question 8 is: "In what proportion of cases of applications for separation orders which have come under your notice has the application been withdrawn or no order made in consequence of reconciliation having been effected between the parties?" You say in the majority of cases?—Yes. The number of separation orders last year, as far as I remember, were from 25 to 30 applications, but only two orders were granted. Both of those were cases of habitual drunkenness. In one case the man and woman have been reconciled, and in the other case I am sorry to say the wife has died since in an inebriates' home.

18,660. Then Question 9: "In what proportion of cases of separation orders which have come under your notice has the order been superseded at the instance of the parties, a reconciliation having been effected?" Quite 50 per cent., you say?—Yes.

18,661. What is the total number of cases upon which you have estimated that 50 per cent.?—The number of cases that have come under my notice during the past seven years.

18,662. How many orders have been made?—Thirty-nine.

18,663. Have about 20 been reconciled?—Certainly. I think I under-estimated when I said 50 per cent.

18,664. What has happened to the rest?—In some cases we have lost sight of them; therefore I did not think it was fair to express any opinion about those. In others they are still separated, I know.

18,665. And living how?—Living very carelessly, at all events.

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[Continued.]

18,666. Then Question 10: "In what proportion of cases of separation orders which have come under your notice has the order been followed or preceded by the formation of an unlawful connection, or by either party lapsing into an immoral life in the case (a) of husbands, and (b) of wives? Please answer this question separately?"—50 per cent., the husbands being the principal offenders. Drunkenness is frequently a cause.

18,667. Will you explain what that means? 50 per cent. of what?—In which there was a suggestion of adultery before the separation was applied for.

18,668. Your answer embraces two different things: one is beforehand, and the other is after the order?—The number of orders granted is so small, and the majority of those have been reconciled. I think I answered that practically in the previous question.

18,669. If you read the question again you will see that it deals with two alternatives?—"In what proportion of cases of separation orders which have come under your notice has the order been followed or preceded by the formation of an unlawful connection?" With regard to "preceded," there was the suggestion I mentioned; and with regard to "followed," those, of course, who are not reconciled, in many instances have drifted, both the man and the woman, but I think the men are the greatest offenders.

18,670. Practically that is covered by what you have said?—Yes.

18,671. The causes you have summarised as incompatibility of temper. In many of the cases that have come under your notice the wife has been seduced before marriage. Early marriage is another cause?—I think so.

18,672. Question 12 you answer by saying that the county court would not be a more acceptable tribunal for matrimonial differences than the police court. The question of publication is the last point. As to that you say publication in the newspapers of divorce cases in your experience undoubtedly exercises a corrupting influence?—I think so.

18,673. And publicity does not act as a check upon immorality, but quite the reverse?—Yes.

18,674. What actual experience have you had of these two matters which has led you to give those answers?—In my work amongst the people, as I said, I do a great deal of work outside the police court in the homes of the people; one gets to know from conversation with them what operates upon their lives, and I was horrified almost to find to what extent they read these cases. They buy those papers because certain reports are published fully, and it has a very bad effect upon their lives.

(Chairman.) I think that is all there is in your proof.

18,675. (Mr. Brierley.) I understand last year in the city of Oxford there was not a single separation order made under the Act of 1895?—I had two, I think.

18,676. I think you said you had two separation orders made, but both made under the Act of 1902?—Yes.

18,677. You had not a single order made under the 1895 Act?—That is so.

18,678. You say there were about 25 to 30 applications; did you follow up those cases?—Yes.

18,679. What was the result of the refusal of the applications?—It was not quite a refusal of the applications; it was adjourned so that I might make inquiries. They did not refuse to grant the summons.

18,680. They refused to grant the order?—No, the summons was not issued; they did not hear any more of it.

18,681. Do you know what became of the parties?—Yes, practically all of them I am in touch with at the present time.

18,682. Still living together?—And happily in many cases—in the majority of cases. From time to time they have little tiffs. We do not lose sight of them. When that matter has been patched up it is not the case that we leave them; we keep in touch with them. Once they have come under our notice we do not lose sight of them for years.

18,683. Your district is very free from matrimonial difficulties, no doubt?—Yes. There are difficulties, but I am glad to say they do not come much to the front.

18,684. What are the working classes chiefly employed in?—A large number of college servants. There are no trades or industries. They are all in connection with the University; on the river, many of them, and the people who work in the gas-works and on the tramways—things incidental to the life of the city.

18,685. Who are the persons you say in your experience are living in adultery?—They are men and women of the lower type. When I say that I mean men who gain their living by street trading and work on the railways by casual employment, such as carrying parcels, &c.

18,686. (Sir Lewis Dibdin.) You have told us that reconciliations very frequently follow these applications for separation orders, and I gather from your evidence as a rule those reconciliations are real reconciliations?—They are.

18,687. Not simply forced upon the wife by starvation?—No, they are real reconciliations. In many instances I know at the present time they are living happily and comfortably together.

18,688. You have told us in a considerable number of the cases where reconciliation fails and the separation order goes on, that the man lives in adultery?—Yes.

18,689. I did not gather from your evidence whether you would give any precise information as to in how many cases the adultery had happened before the application for the separation order. It is not a result of the separation order, perhaps the cause of it?—It was the cause of it.

18,690. You told us it was so in a great many cases, but I did not gather anything precise?—I cannot say definitely, because it is so difficult to differentiate between where the woman suggests that the husband has without being able to bring direct evidence, and where the offence has actually occurred.

18,691. May I take it in your view it happens in a good many cases?—It does.

18,692. In these cases, where the man is living afterwards in sin, do you think as a rule that they are the kind of men who, if they could have got a divorce, would have married and lived respectably?—No, I do not think they would.

18,693. More the kind of men who, whatever their circumstances, would be immoral?—Yes.

18,694. I do not want to put words into your mouth?—No; but that is what was in my mind, men who have no constraining influence in their lives, and naturally live loose lives.

18,695. You have said frankly you are against divorce altogether, on religious grounds?—Yes.

18,696. I gather from an answer you gave to the Chairman that you would also look on the question from the point of view of the way it affects national well-being?—Yes.

18,697. And from that point of view also you were against an enlargement of the grounds of divorce?—Yes.

18,698. Is it the fact that in your view, quite apart from any religious question, the enlargement of the grounds of divorce would shake the feelings of the poor upon the sanctity or permanence, we will say, of the marriage tie?—Undoubtedly.

18,699. That is your deliberate opinion?—That is my deliberate opinion.

18,700. (Lord Guthrie.) You say it would shake the feelings of the poor. What do you mean by "the poor"?—I meant by the "poor"—I take it Sir Lewis Dibdin meant the same—the working classes; not, of course, the artisan.

18,701. Skilled as well as unskilled?—Yes, certainly.

18,702. Respectable as well as disreputable?—Yes, because I find amongst the poor people that they have a very great idea of the sanctity of marriage.

18,703. Take the case of a thoroughly respectable skilled artisan. If he is now to know that, supposing his wife becomes adulterous, he can divorce her and

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withdraw her malign influence from the children, why should that shake his sense of the binding and sacred nature of the marriage tie?—I see the difficulty that lies there.

18,704. I understand your view with regard to disreputable people, but if a respectable working man knows he can get a remedy for the foulest wrong that can be perpetrated in human life, why should that shake his sense of the permanence of the marriage tie?—Because I think if it is once known that the facilities for divorce are made easier it would tend to shake the feeling of security.

18,705. Suppose, for instance, parties at their own will or by mutual consent were allowed to get rid of each other, I understand that; but suppose the law be that except for the grievous cause established after strict legal evidence before a competent tribunal, there should be no divorce, what do you say then?—I still think from my own experience it would cause a greater feeling of insecurity than exists at present.

18,706. Then take the other view. I suppose there is no doubt, if you turn to children, that the existence of industrial schools and reformatories, and children's shelters, and so on, has with a certain class shaken the sense of parental obligation?—Yes, it has, I know.

18,707. But even so the benefit to the State of these institutions may outweigh that drawback, may it not?—Yes.

18,708. You do not think that applies in the case of marriage and divorce?—No.

18,709. You have referred to those newspapers that do harm. Are those the London Sunday papers that come down to Oxford or Dover, or are they local papers?—Not the local papers, the London papers.

18,710. Do these papers circulate in the provinces?—Yes.

18,711. Largely?—Largely.

18,712. In Oxford certainly?—Yes. Every Sunday morning I see 30 or 40 boys out selling these papers, and I know from my work amongst the boys the number of papers they sell.

18,713. Did you find the same in Dover?—Yes; although the Sunday trade in London Sunday newspapers was not so great then as it is now. I think the trade in Sunday papers has increased.

18,714. Can you tell us whether in any other province in England you have seen the same large circulation?—No, because I have no experience.

18,715. (*The Archbishop of York*.) I gathered from your answer to Sir Lewis Dibdin—I want to make the point clear—that in the case of the kind of men you deal with in separation order cases, and who, being separated from their wives, form unlawful connections, you do not think divorce, followed by re-marriage, would be a great improvement in their moral condition?—No.

18,716. They are the kind of people who would regard lightly any contract?—Yes.

18,717. Lord Guthrie asked you how the sense of the marriage tie in the respectable working man would be loosened if he knew he would have the remedy of divorce against his wife. May I take it, in your reply, what you had in your mind was not the feeling of the individual working man concerned, but of the classes to which he belonged?—That is exactly it. I could not express it, but that is what was in my mind.

18,718. You said in answer to the Chairman that you worked under the auspices of the Church of England. It would be more correct to say you work under the Church of England Temperance Society?—I was under the impression that was the question asked.

18,719. That is your position and official connection?—Yes.

18,720. (*Sir William Anson*.) You work in the county as well as in the city of Oxford?—Yes.

18,721. The separation orders, I take it, are mainly in the city?—Mainly; there are very few in the county.

18,722. Not many even in the immediate neighbourhood of Oxford?—Very few—practically none.

18,723. Sometimes?—Yes, but not very often.

18,724. The practice is the same with all the

benches at which you assist, that the order is not granted without inquiry?—That is so.

18,725. You have experience of the rural poor as well as of the town poor?—Yes; I am out in the country two days a week.

18,726. When you spoke of the general high standard of regard for the marriage tie, would that apply to the country as well as to the town?—Yes, I think so; if anything, it is higher in the country.

18,727. You know the life of the poor in the Oxfordshire villages, which are very rural?—Yes; I know them intimately, too.

18,728. I think I understood you to say to the Chairman that there were cases in which expense stood in the way of divorce, in one of your early answers. You say, "In some cases certainly, but not to any great extent"?—No. I have heard people say "I should go for a divorce, but it costs so much," but it is very rarely you hear that.

18,729. Does that mean the parties have seriously contemplated divorce proceedings and have withdrawn on the ground of expense?—No.

18,730. Do they regard it as a thing altogether out of their reach?—Yes.

18,731. And the parties frequently drift into immoral relations?—Yes.

18,732. The man more frequently than the woman?—Yes.

18,733. Is not that because the man left with children in his charge is more helpless than the woman?—Not always. I think the woman's self-respect keeps her from drifting. I have known where women have worked hard so as not to live an immoral life.

18,734. A man is more driven to have a woman in the house to look after him?—I think he is more careless, too.

18,735. I understand you clearly would not enlarge the grounds of divorce?—No.

18,736. You disapprove of divorce altogether?—Yes.

18,737. You think any enlarging of the grounds of divorce would lower the standard?—I think so.

18,738. Certainly amongst the classes you work among?—Yes.

18,739. But as there is divorce for certain reasons, do you think that the poor in their own interests should have more difficulty in getting divorce than the wealthy?—If you are going to have divorce, I think the poor should have equal facilities with the rich.

18,740. Legally have they not got it?—Except on the grounds of expense.

18,741. Would you be in favour of bringing divorce, for the reasons for which it is now granted, as much within the reach of the poor as the rich?—Yes, if you are going to have divorce I would.

18,742. We have got it?—I know. Yes, I certainly think so.

18,743. And that the working man whose wife is adulterous should have the same opportunity of setting his family right as the rich?—Yes.

18,744. You have never considered precisely the procedure?—No.

18,745. (*Sir George White*.) Do you give the Commission to understand that you regard divorce altogether as contrary to moral law, and the law of God?—I think so. That is what I wish the Commission to think. I think a marriage is binding for all time.

18,746. Would it not follow that divorce under any circumstances in your view is objectionable?—Yes. I think I have said that already.

18,747. At the same time you say you would give equal facilities?—Yes, if it is to be what Sir William Anson said it is, but my idea is that there should be none; but as there is, I think the poor should have equal facilities with the rich.

18,748. You would really advocate the repeal of the Act of 1857?—Yes.

18,749. Consequently, when you are asked the question if a certain class of individuals could get a divorce, in your judgment they probably would not marry again and live respectably; but could they live respectably if they did marry again, with your views on divorce?—I do not think so.

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18,750. (*Chairman.*) You have said very clearly how binding you regard the tie?—Yes.

18,751. What I would like to put to you is a serious difficulty, which has been presented by a great many witnesses, how that tie is to be considered as binding when one party to the tie has gone to another country and never comes back again?—That is rather an extreme case.

18,752. No; we have had a great many witnesses who have spoken to a large number of people setting up new homes in America, and leaving the unfortunate spouse behind?—That is altogether wrong, is it not?

18,753. How would you deal with the parties left behind, to do justice to them?—It is a very sad position.

18,754. I should like to put a concrete case: a young woman, who has been married a short time, and her husband goes to America, finds he did not get on, and does not wish to have her, and forms another connection?—I admit it is extremely hard upon the individual that is so left, but still, I think, having been married —

18,755. You would give her no further opportunity?—I should certainly not.

18,756. What ground do you put that on?—That as they have been married by the Church, that marriage is for all time, as long as they live.

18,757. Do you apply that to marriages before a registrar?—I do not think I should. Of course it is legal.

18,758. Do you apply that to anybody who is not a member of the English Church?—If it is a religious ceremony.

18,759. Supposing it was not; we know a great mass of marriages are contracted without any religious service?—Yes, in the registrar's courts.

18,760. I only wanted to gather how you would propose that they should be regarded?—The law of the land recognises them. As a churchman I cannot say that I do.

18,761. (*Sir Lewis Dibdin.*) Might I ask a question about this. Have you studied the question of marriage from the point of view you have just been asked questions upon, as to what makes the validity of a marriage in the eyes of the Church? Have you made a special study of it?—No, not very full. My knowledge has come principally from working amongst the people.

18,762. Are you aware that the Church has never regarded the validity or invalidity of the marriage as depending upon the religious ceremony?—No, I am not aware of that.

18,763. (*Sir William Anson.*) I should like to ask one more question, because I think the witness was misunderstood. Supposing two parties were married civilly, would you attach more or less, or the same importance to the marriage tie under those circumstances as if they were married in church?—I should attach greater importance to it if they were married in church.

18,764. You would regard the marriage tie as binding?—Certainly.

18,765. (*Sir George White.*) You spoke of divorce lessening the value of the marriage tie amongst the poorer classes?—Yes.

18,766. Has that, as far as you know, been its effect amongst the wealthier classes?—I have not had any experience. All my life has been spent amongst the poor people.

18,767. Would you not draw any distinction?—No. But I have no knowledge of the wealthier classes in that way.

(*Chairman.*) We wish to thank you very much for your evidence and the assistance you have given us.

Mr. WILLIAM MUNDIN called and examined.

18,768. (*Chairman.*) Are you a police court missionary and probation officer?—Yes.

18,769. Where is your sphere of operations?—Herts county I reside in. St. Alban's city is my centre.

18,770. Do you cover a large portion of the county?—I cover the whole of the county, but recently I had had an assistant appointed who shares it with me.

18,771. Are you connected with the Church of England Temperance Society?—I work under the auspices of the Church of England Temperance Society.

18,772. How long have you been engaged in that work?—I have been in my present position 12 years, but have just commenced my 43rd year in similar work, police court mission work and parochial work.

18,773. Will you tell me what different districts you were previously in?—I commenced in Rotherham, in Yorkshire. In the earlier days I did a great deal of pioneering work, and was moved to a vast number of places both in England and Scotland.

18,774. The last 12 years you have been at St. Alban's?—Yes, 12 years I have been stationed at St. Alban's. Previous to that I was stationed in Liverpool.

18,775. You have had the same questions before you which I have gone through with the last witness?—Yes.

18,776. Have you them before you, and your answers?—Yes.

18,777. You will forgive my saying we are taking it rather shorter by not reading every question. The first one you have had before you?—May I say I filled in these rather hastily, and since then I have referred to some of my diaries, and perhaps in one or two instances I may just differ from the figures I have put down.

18,778. If you will explain anything there, we shall be glad?—I have come to a little different conclusion, I did it hastily. With reference to No. 1, my answer is, with reference to the poor there is no demand, no increased demand for divorce.

18,779. Two different things you have said. One is no, and the other is no increase. I am not sure what you convey by that. You cannot increase on nothing?—The question, is "Is there so far as your experience extends a wide-spread or any demand for greater facilities." I say none.

18,780. I do not follow the condition of any increase. Will you explain what you mean?—I take the question to ask if I think that there is an increase amongst the people referred to for divorce, an increase for demand, and I answer no.

18,781. That means there might have been one sometimes, and it has not been increased. You mean there never has been?—I do not think there is an increased demand.

18,782. I am afraid you do not make it plain. Increase generally applies to something which has gone before and is added to?—I should say that there perhaps always was some demand in some cases, but I do not think there is any increase of that demand.

18,783. That is quite intelligible. Does that apply to both the poor and the lower middle classes?—Yes. I do not know if I may qualify that.

18,784. Yes, do not consider yourself tied by the answers you have written. We want your considered opinion?—I consider that the recent facilities for meeting the domestic difficulties in the home life perhaps has had something to do with there not being an increased demand for divorce.

18,785. What increased facilities do you refer to?—Particularly where it arises from the oversight of the different institutions; such as the National Society for the Prevention of Cruelty to Children. The inspector enters the homes, and very often his influence improves things, puts a stop to a course of life that would lead to more serious consequences and might be set up finally by the demand for divorce. There are others, the constant parochial visitation set up in the parishes everywhere. There is the agency of our police court mission. I think it is quite likely our coming into touch with those families puts a stop to a great many

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difficulties that might lead to more serious consequences, and perhaps finish up with the requirement or demand for divorce.

18,786. That is to say, better influences produce a better state of morality?—That is exactly what I mean.

18,787. Then Question No. 2, Does the expense attending divorce proceedings lead, in your opinion, to unlawful connections being formed by persons, who, if they could afford to claim it, would under the existing laws be entitled to divorce? If so, to what extent?—My answer is probably, in some very exceptional cases.

18,788. What is the probably?—In very few exceptional cases the expense is a real hindrance to the divorce being asked for.

18,789. Have any of those cases come before you?—Yes.

18,790. In what way?—Particularly the little wish or desire amongst this class of people I have found for a divorce. They do not seem to go so far as that in their ideas.

18,791. What is the ground or cause of that?—I think mere reckless indifference to the situation more than anything else.

18,792. What is your answer to Question No. 3?—No, I do not think so. It would be a great mistake for divorce to be allowed on the grounds of desertion.

18,793. Does that apply to a case of desertion long continued and lasting for years?—No, not exactly so.

18,794. What classes of desertion are you thinking of in answering that question?—The more general, the more frivolous.

18,795. You mean immediately going off and being summoned at once?—Yes.

18,796. A distinction was drawn by one of the Commissioners in the questions he put to one of the witnesses yesterday. What is your view about the cases where one party has gone for years and never intends to come back?—When proper investigation was made, and it appeared certain that there was no chance for reunion, I should really release the person from the tie, I think, but I should advocate a special committee or a tribunal of some kind that should investigate such a case, and that someone besides the deserted wife or husband should be responsible for deciding whether it was really right for there to be a divorce.

18,797. Usually that would be done by the judge?—Yes, but I was referring to some one perhaps I should call more of a vigilant committee, or an investigation committee.

18,798. So as to bring the facts out before the tribunal?—Yes.

18,799. I put to the last witness one of those cases of a desertion which had been lasting for a long time, and one of the parties had gone abroad. Is that the kind of case you have in mind?—That is the kind of case. While I say I hope I do not undervalue the sacredness of the marriage tie, yet I should offer some relief brought about in a proper way to some of those extreme cases. I have met them in my experience when it has been a very painful state of things from that point of view, and you could not help but wish you could bring about some relief and some remedy. I should suggest something of that kind, a thorough and a real responsible committee or body of people which was capable of inquiring and deciding on proper grounds.

18,800. Then question No. 4, "If the law were altered in the manner indicated in the last question (the obstacle of costliness of proceedings being also removed) would the effect be, in your opinion, to loosen the sense of the binding character of the marriage tie amongst (a) the poor, (b) the lower middle classes"?—My answer is "Yes, in my opinion to a very disastrous extent, in both classes."

18,801. Would that operate in cases where there was undoubtedly a real ground such as you have last dealt with. Would it tend to lessen the view of the binding character of the marriage tie if no extension, beyond such causes as for instance the one you have mentioned, permanent desertion, were added?—I think

it would give an opening to a great many people, connected with this class, particularly that we are speaking of, conceiving ways and means without any real reason for bringing about a divorce, to free themselves from the responsibility of the family tie, and the expense, and so forth. There are men of that low base type that would, if they saw that could be obtained for such an amount of money that they might raise either by themselves, or being assisted by their friends, their chums as they call them, I think it would introduce into their minds ways and means of raising the money without any real or legitimate reason for having a divorce, except a selfish one.

18,802. I was assuming that there was a legitimate reason?—Then I should rely upon what the evidence proved and the judgment of the case, and I should give one if they were satisfied on hearing the evidence that there was a legitimate case.

18,803. Question No. 5 is very much the same class of question. I am not sure that you have not covered it by what you have said?—My reply is, "In my opinion very much to the contrary." Yes I think it would; I think the privilege would be very much abused if it was put into the hands of this class of people. I should be afraid to.

18,804. Question No. 6 is as to separation orders. Perhaps you will tell us what you think about that and the working of the Act?—This is one of the cases in which I may differ or add a little to my reply.

18,805. If your reply is not accurate let us have your views as now formed?—I would go this far, and say that the present system of separation orders works well. Of course there are exceptional cases; sometimes there is a miscarriage of facts, but generally speaking I consider that it works well, and that it should be maintained, as in my opinion it meets every requirement of such cases. Then I noticed afterwards what I did not notice at the time, that I was asked to offer some amendment if I considered it necessary.

18,806. You have made some suggestions?—I would like to give these. I do not know whether I should be allowed to do so, but I have dotted out a few amendments.

18,807. Are they beyond what is in your proof. You have three there, but if there is any addition to them, never mind the question or the answer as it stands; will you tell us in your own way what amendments you would suggest?—I would suggest that the word "persistent" in the indictment of cruelty should be dropped, and that any act on the part of the husband or *vice versa* that caused such suffering that it amounted to cruelty, should be a case, leaving out the word "persistent." I would also suggest, I am speaking from experience and what I have gathered of the evils of these particular points from a practical point of view in dealing with the people, that the six months limit of the evidence that is admissible referring to an offence—the evidence cannot go beyond six months—should be done away with, and that evidence should be admissible covering any period when the act complained of was committed, and also the fact that a woman has to live separate and apart from her husband.

18,808. You may take it that we know that point?—That is a very great hardship in the majority of cases. I would suggest that should be dropped. In many cases it is impossible for the woman to leave her home. She has nowhere to go to, no friends or money to pay for her support whilst away: she cannot take the children with her, to leave them is unsafe, and subjects them to neglect and suffering. I have had some very painful experience in these cases where children have been left for days by the wife, who has been compelled to go away because of the cruelty.

18,809. You mean compelled to do so by the Act?—She is compelled to do so until she gets a summons and the case is taken. When her husband's conduct is so violent she cannot stay in the house, I suggest that she should have resort to the police, who should have power to provide for the woman's safety, either by removing the husband from the home so that she and the children can remain there, or by arresting the man there and then.

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18,810. Do you mean merely on her application, without having heard him. Will you look at it from the point of view of the man. I think you are looking at it only from the point of view of the woman?—I should say the other way about as well. The man should have the same right.

18,811. You cannot turn a man out of his house and take his children away without an opportunity of his being heard. That means getting before the magistrates first.

(*Mr. Brierley.*) She can apply for the warrant behind his back. In the case the witness mentions there is nothing to prevent her applying for a warrant for assault, and if the magistrates thought she had sufficient case they would grant a warrant instead of a summons.

(*Chairman.*) A warrant would only bring him up to be heard.

(*Mr. Brierley.*) It would take him out of the house. I understand the witness wants him out of the house?—Yes, in so many cases we have a man, perhaps drunk in the house, and everything there, which is comfort for the children, is under his control, and they are out in the street, the wife and the children very often at midnight hours and for days unless some kind neighbours or someone takes them in, and the man is there and does not care a toss.

18,812. (*Chairman.*) Whatever the machinery, you want to give her the opportunity of getting an order, and in the meantime of getting a position established which removes these difficulties?—Yes; another great hardship is inflicted in the system of adjournment. If an adjournment is considered necessary, or allowed by the justices, the woman has to go out of court perhaps for a week, a fortnight, or a month, as the case may be, and she has no home. The man has possession of the house, and there is no power to order him even to contribute to the woman's support during that adjournment, and great suffering and hardship is experienced in many cases from that.

18,813. Is not that got over by making the adjournment on the terms of his paying?—They may do that, but if I understand the Act rightly they cannot enforce it.

18,814. They can only put him on terms if he asks for an adjournment that he should pay in the meantime?—Sometimes the man does not want the adjournment. They do not want it, and they will not agree to any of those terms that may be offered to them. Then when an order is made, and a weekly payment is to be made by the man, he leaves the court, and there is no power to interfere with him doing so, and the poor woman has to wait a whole month before she can take a warrant for his arrest for non-payment if he does not pay. That is another extreme hardship she has to suffer during that month.

18,815. It has been suggested that the order should be made to pay in the week, and if not paid he should be arrested then?—That is my suggestion, that unless he showed there and then that he is without means he should be made to pay the first instalment before he leaves the court, but in any case he must be called upon to pay it within one week or a warrant can be issued for his arrest.

18,816. Is there any other suggestion you wish to make?—The law does provide that the payment can be made through a third party. I would suggest that the third party should be in a position to take action if the man does not pay, irrespective of the woman's opinion or the woman's action. The third party is made responsible for receiving this money and paying it over to the wife.

18,817. Would that be some responsible official of the court?—Yes, and that he should have power to take action regardless of the woman's opinion about the matter.

18,818. How is he to be provided with the cost of doing it?—I should put it on the defendant if the case was proved against him and I should make him pay.

18,819. He might not have the wherewithall to pay?—In so many of those cases they have not, because they have spent it in the public-house or

wasted it, and I think it would be a means of following them up.

18,820. I agree, but who is to provide the initial expense if he is to take action?—The third party would draw the warrant for his arrest, and then it would be covered the same as it is now, in the decision of the magistrate.

[.] 18,821. The third party might say, "I will not do this without money to do it"?—I do not think there would be any difficulty there, because it involves scarcely any expense. It involves very little indeed. I am constantly doing it now in an unauthorised way.

18,822. I daresay Mr. Brierley knows better than any of us who bears the expense of bringing a man back from one county to another?—On warrant.

18,823. Yes?—In a separation case for non-payment.

18,824. Yes?—The court, I believe—no, I think the person who takes out the warrant.

18,825. Is the official, whoever you suggest, to bear that expense if he cannot get it out of the wrong-doer?—I have not contemplated that, I am afraid.

18,826. Your suggestions are extremely valuable, but when we put them into practical working we must see that the machinery is in order?—I should say that if the man is brought, and the expense incurred, it should be put upon him.

18,827. Supposing he cannot pay?—I should say, if it was an extreme case like that, have it remitted in the ordinary way, as the costs of the court, which is done in many cases.

18,828. Paid by the State?—It is done in less important cases.

18,829. Do you mean paid by the State?—Yes, it would have to come on to the State.

18,830. Are there any other suggestions you have to make?—After the separation order, the way back again is very often too easy; and I would suggest that an amendment be made in this respect, where a man takes it into his head he is tired of paying 7s., 10s., or 15s. a week, and goes fussing round his wife without any serious intentions, and makes her believe a great deal of what he says, and she simply goes back to live with him, and nobody who has had all the trouble and expense of taking care about getting her separated has anything to do with her going back again. I would suggest, if an order had been made, and it was their intention to cohabit again, that they should have to come to the court that had made the order, and that the facts should be given to the justices, and they in their discretion should give permission, warning the man, or on the other side warning the woman, at the same time making them feel that it was not such an easy matter to have a separation and go back and live together without further trouble.

18,831. Are not you putting stumbling-blocks in the way of reconciliation?—No, I should say it would help it. If I was trying to bring about a reconciliation between a man and his wife one of the best things I could say would be, "Come to the court on such and such a day and I will represent your case; I will tell the court how things are standing and you can ask them to let you re-unite." I think it would make a great impression; it would make them feel that it was a more serious matter than they thought of.

18,832. It comes to this, the order should remain in force until the magistrates rescind it?—Yes.

18,833. Merely coming together would not get rid of it?—No, and that they should have the privilege to cancel.

18,834. By "them" you mean the magistrates?—Yes, I think, and I have tried to get it in my 21 petty sessional courts, that the Probation Act, even in such cases as those, would be very useful if applied. If, when hearing the evidence of the applicant for an order the court think fit, the justices shall place the defendant on probation for a period suitable to the case. We have had very many cases that have ended very happily indeed through the man or the woman being placed on probation, and there has never been any further trouble about it. That is

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all I have to say in that respect, except with reference to the tribunal. I think that comes in on the county court.

18,835. You have some amendments in your answer to the question which you have not dealt with. Do you wish to put those before us. The first one is a very important one?—I suggest that separation should be granted on proof of adultery on either side.

18,836. That is by the magistrates?—Yes, if that satisfied the requirements of the case; if not, that is when I should take another course, and that is on the magistrates being satisfied that there was adultery in the complaint, that the magistrates should then refer that case to the assizes and it should be tried by a judge and a jury, if it amounted to a likelihood of a divorce being necessary.

18,837. If it did you would grant the divorce?—Yes, it should be done at the assizes and not at the county court. Each case should come first to the magistrates, the bench of summary jurisdiction, and if a separation would satisfy the case in their opinion, they should grant a separation, otherwise it should be referred.

18,838. Passed on to a higher tribunal?—Yes, and the cost of that would be the lowest cost I should suggest for a divorce, whatever that cost would be. I should not suggest any cheaper way of getting a divorce except through those means, by the magistrates' court and then the assizes.

18,839. Does that mean that you would send everybody through the magistrates' court first?—Yes.

18,840. Whether they were rich or poor?—Yes, I should make all alike in that respect. I should say the application should be made first, and the case tried by a court of summary jurisdiction, and if found necessary it should be sent forward to the assizes. In my opinion that would be the best course. The magistrates making the order should have power to regulate the dividing of the furniture when a separation is granted. That is another great difficulty.

18,841. It comes to this, that any power necessary to regulate the two people after a separation or divorce should be exercisable by the court?—Yes, that is what it means.

18,842. The last point you have already dealt with. Now Question 7. You are asked what cases come before you in which they might have claimed a divorce but could not afford the expense of it?—My experience shows a very small proportion indeed, judging from the nature of the complaints generally made, as adultery is so seldom included as a factor in the case. I should say hundreds of cases in over 40 years experience, and that is another alteration. I find by my diary I might venture to say thousands of cases in my 43 years experience.

18,843. What does that refer to. Is that the number of cases of trouble that come before you but not the adulterous cases?—Yes.

18,844. I think we may take the rest of your proof very shortly. In reply to Question 8 you say, "I should say fully 50 per cent. have been withdrawn or annulled, in consequence of a reconciliation between the parties"?—I wish to change that after referring to my diaries to 70 per cent.

18,845. That gives the effect?—Yes.

18,846. Number 9 is the proportion where the orders have been superseded by reconciliation?—Yes.

18,847. That is orders which have been enforced but have been superseded?—Yes, quite 50 per cent.

18,848. You alter it from 35 per cent.?—Yes.

18,849. Fifty per cent. of those which have been operative orders come to an end?—Yes.

18,850. Will you explain your answer to Question 10?—Yes. I think I am about right in saying that 10 per cent. of the men under the present system perhaps drift to an immoral life.

18,851. And of the wives?—7 per cent.

18,852. Will you tell me whether that drifting is by reason of something occurring before these orders or what occurs after, or both?—On the part of the man I must make a difference, because I find there is such a great difference. In their case it is generally begun

before the order. There has been some unholy relationship in some direction—some new attraction that has been the cause.

18,853. Of the order being made?—Yes, of the difference at home.

18,854. That has led to disaster?—Yes.

18,855. Have you found any cases where it has begun after the orders?—Not so much. I could not say I have found scarcely any.

18,856. What do you say about the women?—A much less proportion on the part of the women.

18,857. Is that for something before the order?—No.

18,858. After?—Mainly after, and in the case of the women they are placed in very trying circumstances through losing the support of their husband, and they have been influenced and led astray by offers of support food and wages, and they have felt themselves cornered and being in distress, not having money, and so they have yielded and gone astray.

18,859. Would you say that the separation order in those cases was a good thing?—To begin with it was it good thing, and there are two aspects of a case like that. While it has relieved the woman and her children from a wretched life, and we cannot help but feel a degree of satisfaction in that when we know what a miserable life they have had to live, yet at the same time, if she takes this course and drifts into immorality we cannot but feel very sorry, and I think it remains with us and other Christian workers and so forth, to do all we can to counteract such a state of things and influence these poor women. I think it shows a need of great watchfulness on the part of Christian workers and the missionary as well to try and save these poor women from being forced into this condition of life.

18,860. Suppose the order, instead of being a separation, was a divorce order, she would then be free to make a proper and legitimate connection?—I think that generally the remedy would be really worse than the supposed disease. I have to do it in a general way. I think in extreme cases a divorce would be better as a second step.

18,861. After what?—After the proof of immorality.

18,862. That would be a divorce got by the wrongdoing husband?—Yes, if it could clear away the difficulty, never mind whom got by.

18,863. Would it not be better to clear away the difficulty before it arises?—Perhaps the difficulty is not there in many cases, because there is such a large proportion in which that difficulty never appears or comes, and then in those cases a divorce to my mind would be a mistake.

18,864. I suppose it could not be granted except for definite grounds. I think I see what you mean. Then Question 11, "What in your experience have been the chief causes leading up to applications for separation orders"? Will you summarise what you say about that?—My reply is, "Petty family differences." That is almost a leading factor, arising from many different reasons.

18,865. Do you think that these orders are too freely granted?—As far as my district is concerned, where my experience is confined, I think that there has been a great change in that respect lately. The magistrates' clerks in the first place do not grant the summons when the woman or the man applies, at once. It so happens I have had no less than five cases last week alone that were sent to me by the magistrates' clerk, when the women applied for summonses for separation orders. In each case they advised the women to see me as the court missionary. I did so, and heard their story, and then I went to see the husband, and the result is that now, so far, at any rate, the wife went back at once.

18,866. You mean that the magistrates are exercising the jurisdiction more carefully?—Yes, with great care.

18,867. Then what are the other cases?—Slothful extravagance on the part of the wife (a most prevalent factor). Wives are less capable than they used to be. Drinking habits of the husbands, and also, in many cases, of the wives, I am sorry to say.

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[Continued.]

18,868. Question No. 12 is the suggestion about county courts taking this jurisdiction?—As I have said, I think the police court is the proper place, and then if it amounts to a case of divorce, or is thought to be a case of divorce, it should be sent forward to the assizes and tried.

18,869. Now we have got to the last question. Will you give us your experience of publication, its influence, and whether it acts as a deterrent?—I think it does upon this class of people.

18,870. Does what?—Exercise a rather corrupting influence upon them, and does not do them much good.

18,871. Have you come across much to that effect?—A great many cases of either wilful misunderstanding of what they are reading or ignorance of what was really intended in the case, or intended to have been said.

18,872. Do you think it acts as any check on immorality?—I do not think so.

18,873. (*Mr. Spender.*) In regard to your last answer, would you mind explaining a little further. We get a good many general statements but not very much actual experience. You have come across cases of criminals or people who have come to you, or who have been put into your charge by the magistrates, who have said that their minds have been corrupted by reading reports in newspapers?—Yes.

18,874. And divorce cases especially?—Yes.

18,875. What kind of papers are you thinking of. What kind of reading do you mean—daily papers. A good deal has been said about the Sunday papers?—I cannot distinguish between the papers. I read very few myself, but they are referred to very often by people. A man will say when I am trying to influence him in one direction, "Look here," and will pick up a paper and show me a paragraph referring to some case he thinks compares with his, and will show me what has been done. He says, "I have just as good a chance as that." I see by that he has misunderstood what has been said and what has been intended for him to understand.

18,876. Would not that refer equally to all reports of crime. We are thinking especially of cases of sexual indecency?—I think it is so with reference more or less to all classes of crime, especially to the one we are speaking of now. I think many newspaper reports put into the minds of a great many of those people things that they would never realise and never grasp before, and it helps them very often in their evil propensities and evil courses. I have seen that again and again, and have had to contend with it in characters and lives I have been trying to influence.

18,877. You have made a suggestion about separation orders and the method of rescinding them. Have you thought what would happen if the parties went to live together again without the separation order being rescinded?—I think if the impression was rightly made there would not be much of that. They would realise they had to obey the order of the court, and would feel, I think, that they had to apply to the court.

18,878. The court would have no power to prevent them living together if they chose to?—In my suggestion it would be made imperative that they must come to the court.

18,879. Supposing they do not come, what are you to do?—They must be ordered to come.

18,880. If they are found living together, and there is a separation order, they should be summoned, and required to appear to justify themselves?—Yes, I think it would give all the more weight to the transaction, and make all the better impression.

18,881. Does it not occur to you that in some of the cases you have described, which are very harrowing cases, that it must be a hardship, where there is ground for divorce under the present law, that the poor should not be able to obtain it. Many of the cases you have described would have their remedy in divorce if they were people of a richer class?—Yes. That is the course I should suggest for their relief, that they ought to bring their case into the court of summary jurisdiction first. That would not cost very much.

18,882. And then go on to the assizes?—Yes.

18,883. Have you thought what the cost of that was likely to be?—I have not.

18,884. We have had a good deal of evidence before us to suggest that the process of going to the assizes, apart from the preliminary process below in the police court, would be expensive, and so expensive as to be practically a prohibitive one for the poor?—I do not think so myself. I think it would come within the reach of all.

18,885. What kind of figure are you thinking of, that people of this kind would be able to afford. We have had various figures put before us, but most witnesses have put a maximum of 10*l.*?—I was just going to say that it might be anything from 10*l.* to 15*l.*

18,886. You think these two processes could be carried through for that expense?—Yes, generally speaking it would.

18,887. Then in regard to your view as to the effect upon public opinion, of extensions of the grounds of divorce, or of the cheapening of divorce on the morals of the poorer classes, you made two replies to Questions 2 and 3. You said in reply to Question 2, that you thought there were very few demands for divorce amongst the poorer classes, on the ground that there was a reckless indifference, I think that was your phrase, as to whether they were married or not. Did I rightly understand you?—No, I did not mean to say a reckless indifference as to whether they were married or not, but their general habits of life.

18,888. Would you explain that a little. You think their general habits of life are such that they do not reach the level at which divorce becomes desirable?—No, I do not think that they consider for one moment that it is necessary or would be useful to their case. They could have their own way without going to that trouble.

18,889. If that is so, you can hardly say that an extension of the grounds of divorce would affect the morality of that class, if they started from that condition. I think you said that in your third reply?—Yes, I should still think so.

18,890. (*Sir George White.*) You name 10*l.* or 15*l.* as the amount cases are likely to cost going to the assizes. Is not that a very serious amount for labourers in Hertfordshire to raise?—No, many other cases in which they are concerned they raise that and more.

18,891. In your judgment it would not be a barrier?—I do not think it would be any barrier.

18,892. I think you admit that there may be legitimate cases for divorce, and you name permanent desertion after due inquiry as being one ground?—Yes.

18,893. Would you include permanent lunacy under the same heading?—I should.

18,894. I almost gathered, until you answered the Chairman, that you had got the notion that separation orders were too easy, because you rather extend the grounds upon which they might be worked. Is that so or not?—Did you understand me to say that they were too easy.

18,895. No, we have had evidence in some quarters that separation orders have been made too easily. I gathered from your evidence that was not your opinion?—That is not my experience in the district I work in. I think more and more a much tighter hand has been held over these things by the justices and the magistrates' clerks.

18,896. You advocate that both rich and poor should appear in the first instance before the court of summary jurisdiction?—Yes.

18,897. Does that mean that you are prepared to do away with the High Court altogether?—Yes, except for appeal, if appeal was necessary.

18,898. Do you think that the idea of divorce not coming prominently to the front amongst the poorer classes is because they are aware that the cost is hopeless, and therefore it is not a thing they contemplate?—I do not think there is very much of that.

18,899. That is not the reason?—No.

18,900. You express the opinion that a good many of the domestic difficulties are brought about because wives are less capable than formerly?—Yes.

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[Continued.]

18,901. Is that a matter of experience?—Yes.

18,902. The training our girls get in cookery and domestic economy is absolutely thrown away when it comes to practical use?—No, I should not advocate that it should be left out, but, like many other things, when a boy or girl leaves school and goes out into the world, they forget and drop so much of what they learned, and go in an opposite direction.

18,903. Formerly they had no opportunity of obtaining this knowledge, and therefore it could not be dropped?—There was better parental control and better supervision in the domestic circle years ago than there is now.

18,904. You consider the circumstances in life of young persons in consequence of parental control used to produce better wives than education does now?—For the lower working classes I do think so, very much.

18,905. (*Sir William Anson.*) You think on the whole, I gather, that separation orders are working well?—I do think so.

18,906. Subject to certain amendments which you would introduce. Do you think a couple who have been separated and have become reconciled and living together again, should be brought before the magistrate to explain why they are living happily without his consent?—I should have it done at once. My object would be, before they did re-unite, that they should come before the court to have the matter settled.

18,907. Do not you think that would be rather an obstacle. It is rather a matter of sentiment, the husband and wife meeting and thinking that they will make it up and live together again, but you want them to go before the magistrate to get his consent?—Perhaps there would be some cases where it would seem to be imposing an unnecessary task, but for the sake of the many that are led astray without any good and serious intention, and who break the separation order for no real and good reason, I think for the sake of preventing that, it would be worth erring on the other side.

18,908. You think the reconciliation might be more permanent?—I do.

18,909. And substantial?—That is my object in making the suggestion.

18,910. In some cases of separation orders the parties drift into immoral relations?—In a very small proportion, is my experience.

18,911. Under those circumstances have you come across cases in which they have contemplated divorce?—No.

18,912. Or ever thought of divorce?—No, I hear myself very little of divorce amongst these people.

18,913. Not as a thing they are deterred from because of expense, but because they do not think about it?—They do not seem to.

18,914. Would it be desirable under those circumstances it should be brought home to them that they can get divorce and that the expense would not be great?—I should be very careful in doing that. I should want to know something of the nature of each case before I did introduce that idea.

18,915. Should you think it desirable that they should be set free in order that the man might marry the woman with whom he had been living, or the woman to marry the man with whom she had been living?—If I was dealing with a case like that I should try and see if the lawful man and wife could not be got together again. I should spend every effort in that. If it became impossible I should throw my hands up. I do not think I should encourage them to get liberty for the sake of getting married unless there was some real cause for it. I do not know what it would be, but I should judge each case in my own mind.

18,916. As regards procedure, you suggest that everybody should come before the police magistrate or their local bench in the first instance?—Yes.

18,917. And that then the matter should go to the assizes?—Yes.

18,918. And the High Court in London should only be used by way of appeal?—Yes.

18,919. There would be no judge with continual experience in matters of divorce. You would have a

variety of judges dealing with the subject?—I should consider that a judge would be capable of arriving at a very fair conclusion on hearing the evidence.

18,920. You do not attach any value to the fact that you have experienced judges always working on the same subject. You think the judges at assize would do all that was necessary?—I think so.

18,921. With regard to desertion, would you fix any period of desertion. You say you would add desertion to the grounds of divorce?—No, I think not. I do not think I said I would add desertion to the grounds of divorce.

18,922. (*Chairman.*) Yes, you said long continued desertion?—Yes, I beg your pardon.

18,923. (*Sir William Anson.*) It is important in these matters to see what is precisely meant by new grounds you are introducing. What is meant by long continued desertion?—I should say a period that seemed to prove that there was no hope or intention of the parties coming together again.

18,924. It would have to be in the discretion of the court to say how much desertion indicated a settled determination not to return?—I think so.

18,925. Otherwise you would not grant it, except where there was no prospect of the husband returning?—I should not grant it except it was in a case where there was no prospect of re-uniting.

18,926. You would not regard that as one of the chances of marriage which every party risks on entering the marriage contract?—I think if they were made aware of that there would not be so many reckless and unwise marriages. It might check the wretched state of things that we have got to now in that respect amongst people by indiscriminately marrying.

18,927. You would like the word persistent left out of the definition of cruelty?—Yes.

18,928. Would not that raise difficulties as to what was a particular act of cruelty?—I find now that there is a great deal of question raised as to what is persistent cruelty.

18,929. I agree?—I hear that point argued so much amongst the court advocates that I think it would be better out of the way.

18,930. Would not that add to the difficulty by widening the area of the discussion?—I do not think so. I think if it was shown that the conduct had caused suffering that would be sufficient.

18,931. (*The Archbishop of York.*) I did not understand your answer just now to Sir William Anson. How do you think including desertion in the causes of divorce would check the recklessness of marriage? Would it not induce some people to desert in order to get rid of the marriage they found inconvenient?—I do not think it would, myself, because the period is far too much ahead. It means in the cases cited it is after many years, or some years. A permanent desertion has been set up so that this thing had come about. I do not think it would affect the man or woman at the onset as to what was going to happen some years hence.

18,932. How would it check the irregularities of marriage remaining, I want to know?—Perhaps if I was to say that I think the more difficult it is for a man—I speak of men particularly in this case—to get shot of their wives, the more likely he would be to think twice before he got married.

18,933. I agree, but you said you advocated an extension of the things which enabled a man to get rid of his wife, namely, desertion. How does that check irregularity?—I think it would, because it would mean such a long period before he would be entitled to the advantage.

18,934. I do not press the point. In your long experience have you come across many cases of prolonged desertion of wives by their husbands?—No, I have not come across a large number. I have in my mind a few cases. I remember distinctly two cases in the city of York, one of my old stations, and also three cases in St. Helens, Lancashire, where I was stationed. I remember a case in Oxford many years ago when I was stationed there. Roughly speaking, I think that is about all I remember.

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[Continued.]

18,935. You spoke about thousands of persons in difficulties in 43 years experience. It does not come to a very large number out of them?—No.

18,936. You have said in the majority of cases where immoral connections had resulted after a separation order, the husband had been guilty of immorality before the order?—Yes.

18,937. What, in your opinion, would be the effect on the public morals if that man was enabled after his separation order to marry the woman with whom he had been known to be living?—Speaking of this class, the majority of such men would simply continue.

18,938. They would not trouble about re-marriage?—If they could be married, they would simply go on and commit the same offence again.

18,939. Supposing a man married a woman with whom he had been guilty, and everyone knew he had been living with her, it would mean the State said these two were respectable parties. Would that be a very good thing for the neighbourhood?—I do not think so.

18,940. (*Lord Guthrie*.) You said if a married man went wrong you do not think if he were divorced it would be good that he should marry the woman. Would it not be the least thing he could do?—Yes. Everything else being favourable it would be perhaps the best thing to do, but I can scarcely conceive everything being favourable in connection with that particular case.

18,941. If an unmarried man seduces an unmarried woman, you approve of his marrying her?—Generally so.

18,942. Why do you draw the distinction if the married man seduces an unmarried woman, he should not marry her if he has been divorced?—He has responsibility and obligations.

18,943. I assume he is divorced and freed from those obligations, and in a position to marry again. Why should he not do the utmost he can for the woman he has seduced?—There is so much hanging behind the man. What about those dependent upon him for their support, and that kind of thing. How is that man going to keep her? If a man gets severed from his wife there are often children.

18,944. You would approve of the court as a condition of divorce compelling him to make a proper allowance for his children?—Yes.

18,945. Assume all that out of the way, why should he not marry the woman?—I should say yes, in that case.

18,946. Of course in considering this matter I suppose you agree that we must have in view not only the interests of the man and the woman, but the children?—It was the children I was thinking about in trying to answer your last question.

18,947. The children of the future are the more important of the whole lot to the State?—Yes, so much evil would come out of the transaction in that respect, to my mind.

18,948. I suppose whilst we must have in view the text, "That which God has joined together let no man put asunder," we must have in view the other text, "Train up a child in the way he should go"?—Yes.

18,949. You have been in many places; have you found the feeling of the binding nature of marriage differ much in those places, or is it the same all over?—I think pretty much the same all over, in my experience.

18,950. Some have it strongly, others diminishing down to nothing?—Yes.

18,951. I understand in what you have said about desertion you would never countenance the notion of allowing divorce for a mere separation through a quarrel or a tiff?—No.

18,952. We have been told at Dover and Oxford the London Sunday papers increasingly circulate. Can you tell me how it is in Liverpool?—I could not tell you.

18,953. (*Chairman*.) Is it not St. Helens?

(*Lord Guthrie*.) He was in Liverpool before?—I was in St. Helens, in the Liverpool diocese.

18,954. You cannot tell me?—We have had several complaints of children being used on a Sunday in

selling those papers, but I have not followed it closely; I know that it is done.

18,955. The classes you deal with at present you have told us cannot face the Divorce Court, on the ground of expense?—Yes.

18,956. I suppose the matter of divorce would never really come up?—Very seldom.

18,957. It is beyond them?—They never reach as far.

18,958. They cannot get separation on the ground of adultery in the summary court at present, and therefore the question of adultery does not come up either?—Yes, but before that I must say that in my inquiries into the cause of the quarrels I seldom find a man or woman charge each other with that. I have been particularly struck with that.

18,959. But still it is not a relevant question, because adultery is not a ground for separation in the Summary Jurisdiction Act; it only incidentally comes before you?—Yes.

18,960. (*Judge Tindal Atkinson*.) Supposing that the assizes are too expensive for the parties, what courts should they go to? What is the other alternative?—I think I should suggest that they came under the same rule as the poor prisoner comes under when he has the privilege of asking for a counsel.

18,961. That means the State would have to pay the costs on both sides?—No.

18,962. Or the petitioner's costs?—The costs of the persons who was so poor that they asked to be allowed a counsel, the same as a poor prisoner does now.

18,963. That would be the petitioner and respondent. Assume a case in which a respondent has a good defence; do you suggest that the counsel should be allotted to the petitioner alone?—No.

18,964. Then the counsel is to be allotted to both petitioner and respondent?—I think if the judge was satisfied that they were needy cases.

18,965. Who is to pay the cost of the witnesses going to assizes and staying there till the case comes on?—I think that I should say they would be prepared to pay for themselves.

18,966. How many days?—I should say not so very many days.

18,967. You know Hertford?—Yes.

18,968. Have you been to the assizes there?—I always attend the Hertford Assizes.

18,969. I suppose you have known assizes where there will be 10 or 15 criminal cases, and even 20?—No.

18,970. Ten or 15, and two murder cases amongst them, perhaps?—Yes.

18,971. Then the judge will have a list of five or six civil causes?—Yes.

18,972. Where would you find time for those divorce cases that come from the different benches of magistrates in the whole county?—You would have to extend the judge's time.

18,973. What about the next assize towns he had to go to?—Certainly, if there was much of this kind of thing it would need an increase of the staff of judges.

18,974. If you have enough, that might do. You say there is no demand amongst the classes you mix with for divorce?—Not much.

18,975. Supposing that facilities were given, do you think they would be taken advantage of where people have just cause?—Perhaps so.

18,976. Is there any reason why a person who had a just cause for divorce should not have the facility?—I think what I suggest would give them the facility.

18,977. You think they should have the facilities?—I think they should have their case tried, if I do not go further than that. I would have the case tried.

18,978. You agree the question of the children is of extreme importance?—Yes.

18,979. Has it occurred to you that by giving the county courts jurisdiction you would get a judge in every district in the Kingdom who would be able to deal with the custody of children immediately before proceedings were commenced?—I do not know but

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what the same power could be given to the judge, or the court assizes.

18,980. He only comes round three times a year, and the county court judge is on the spot every month. Would there not be greater facility for getting the children out of the custody of the offending party?

(Chairman.) Are you not putting points we really know?

18,980A. (Mr. Brierley.) There is one suggestion you made with regard to amendments in the practice of separation orders, about which I should like to ask you a question. Do I understand that you thought the magistrates ought to have power to place the man and the woman on probation for a certain period before granting the order?—Yes, either party, if they thought it would be useful.

18,981. Did I understand you to say you have already known it done in some cases?—Yes, I have several cases now on probation.

18,982. In cases of applications for separation orders?—Yes, where it was really an application for separation orders.

18,983. I do not see how they did it. Do you mean they asked the police court missionary to see the parties, or placed the parties on probation?—Very often when a man, if it is the man who has been accused, comes into court he is another man, and starts to tell a story, and ask for the chance to turn over a new leaf, and the whole aspect of the case is changed. Then it is suggested by somebody in position, "Do you not think it would be better if you see these people?" and very often they ask me to go into the witness room and talk to the parties.

18,984. I understand as probation officer they ask you to see the parties. I thought you suggested some process of placing them formally under probation?—Yes.

18,985. I do not see how it would work. In most of the cases the parties are apart?—Yes. Then they come together again in that case, and the man promises to do better, and he promises to give up the drink.

18,986. In cases where the wife consents to go back again, and the parties go away together, you mean there should be a power of giving the probation officer a right to visit them for a certain period of time?—Yes.

(Mr. Brierley.) I did not follow the suggestion. I thought it seemed a valuable one.

18,987. (Mrs. Tennant.) I think you modified the opinion you expressed at first that it would not be desirable that a divorced husband should marry a woman

with whom he had been living previously. Have you in mind the position of the children of that second union if the parents did not marry?—Yes, I have considered it, and it is a very serious question on both sides. There are the children he has left behind, and the children in the future, and I think they are both entitled to consideration. Where are you to draw the line for the best for both parties in a very serious and difficult matter? You may be applying some remedy to relieve one party and you are inflicting an injustice upon the other party.

18,988. Are you thinking of the material injustice of financial support?—Yes, mainly so.

18,989. That is not influenced by the marriage of the parties who are living together. The children are there in both cases, the children of the wife and of the woman with whom the man is living. The marriage of the two people does not affect the amount of money which is to be given to each set of children, but surely the marriage of the parents does affect the position of the children in the world, and the respect they feel for their parents?—Yes, it does, but would the marrying in connection with the second family relieve him of the same difficulty or obligation in connection with the first.

18,990. Not as far as support goes. The fact that he married the woman with whom he was living would not influence any finding of the court for the support of the children of the first marriage.

(Lord Guthrie.) The witness means it would affect his ability.

18,990A. (Mrs. Tennant.) If the children are there, the fact that he has made them legitimate does not affect his ability to pay for the children of the first family?—If it comes to compulsion, if he is married he is bound to support, but if he is not he is not bound to support. In my own mind there seems to be a difficulty, an evil unremedied on one side or the other that I cannot decide upon in my own mind. I could not venture to say which would be the less evil of the two.

18,991. You feel it is a very serious position for the children of the second family if they are left illegitimate?—I feel it, and have experienced it, because I have dealt with such children many times, and have to deal with them.

18,992. You think that they feel their position, that it does affect their position in the world?—Very much so.

(Chairman.) We thank you very much indeed for your evidence; we are very much indebted to you for it.

Mr. ALFRED CHICHELE PLOWDEN called and examined.

18,993. (Chairman.) You have been good enough, notwithstanding an attack of illness which prevented you coming at the time fixed, to offer to give your evidence?—I hope I did not give the Commission inconvenience by not coming.

18,994. You have not quite recovered yet?—Not quite.

18,995. Perhaps I may be permitted to take your evidence rather briefly; will that suit you?—Very well indeed.

18,996. You are one of the metropolitan police court magistrates?—Yes.

18,997. You have had as such, I daresay, a number of separation cases before you?—Yes.

18,998. And I daresay you have had to consider questions of separation as bearing on divorce?—Yes.

18,999. You have sent us a short note of your evidence; will you kindly amplify it in any way when I ask you the points of it. The first matter is as to the way in which divorce should be considered?—My view of that is that marriage and divorce are really parts of the same question. I deal with these questions purely as human institutions, and as such I look upon marriage as a partnership, and divorce as a dissolution of that partnership. I take the view that there is a great deal of unreasoning prejudice against divorce which I think might, by the aid of certain alterations

in our law, be considerably diminished. It is a mistake to think that divorce is in antagonism to the institution of marriage. It really adds to its weight and stability by making it easier and more popular, by extending inducements to enter into marriage. In my humble opinion marriage should be encouraged in every way, and divorce should be encouraged, not for its own sake, but for the sake of marriage. Regarded as a human institution, marriage cannot hope to be a working success unless divorce is in the background as a reserve. With divorce as a protection against unforeseen calamities arising out of marriage, marriage becomes a wise investment having regard to the circumstances generally. Without divorce I look upon marriage as a dangerous mad gamble. Therefore I think they are closely connected, the two things. Divorce really consolidates and strengthens the marriage tie if it is properly understood. I start with the broad fact that divorce is now part of the law of the land, and therefore the only question is whether it should not be extended, whether the benefits of divorce—I go so far as to call them the blessings of divorce—should not be extended to the poorer classes.

19,000. You say in your note neither marriage nor divorce should be made too easy?—Yes. I frequently see reference made to a fear that divorce would be made too easy or cheap. To my mind the value of

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divorce does not turn on whether it is dear or cheap, whether it costs as much as a motor-car or as little as a bicycle. Nor do I suppose anybody thinks it ought to be made too easy, that is to say, granted on frivolous grounds. Nobody in his senses contends for that: all one contends for is that it being an established principle, that it should be granted for certain grounds, those grounds should be such as to receive the assent of the large, intelligent, and sensible portion of the community.

19,001. You say everything should be done to encourage marriage, but divorce should be accepted as a social necessity?—I think one is as much a social necessity as the other.

19,002. You say marriage is at present too easy, and that reform is needed?—Yes, far too easy.

19,003. In what way, can you suggest?—Practically there is no restriction upon marriage. Children can marry in this country without any inquiry being made or difficulties raised. I should like to see some check put upon marriages as they are at present. I adopt, to begin with—I do not adopt it, because I have felt it myself for years—a suggestion which was made by my friend and colleague, Mr. Cecil Chapman, that no marriage should be legal in this country unless it was performed before a registrar or some civil officer. I understood Mr. Chapman to base that upon his belief that the marriage before a registrar would be more binding upon a great many people than a ceremony the terms of which they did not readily understand. I agree with Mr. Chapman in thinking that. I think a civil rite would be more simple and more impressive and more easily “understood of the people,” by many people, than a ceremony in church or chapel. But I go further than Mr. Chapman on that point, and think it is very desirable that the community at large should be educated into realising what marriage is. In its essence it is nothing more nor less than a civil contract. So long as the great majority of marriages are celebrated in church or chapel, that leads to an exaggerated view being taken of the religious character of the contract. I am not, of course, thinking of Roman Catholics or sincere churchmen who have very strong religious convictions upon the matter. Of course we all look upon those feelings with intense respect, but I am thinking rather of that large mass of floating indefinite opinion which, without thinking about the matter at all, takes it rather for granted that because all these marriages are celebrated in church there must be something mystic or spiritual about it, which of itself makes them think divorce is immoral. I think that is an entirely misleading view. It was, if I may use the expression, effectually knocked on the head by the Act of 1857, which declared that marriages were dissoluble. I think if marriages, instead of being celebrated in church, had to be celebrated compulsorily before a registrar or civil officer, the effect would be to make people see it in its true light as a civil contract.

19,004. You would allow anybody to have such a ceremony afterwards?—Yes, certainly, but the legal marriage should be a civil rite before a registrar. Then people would understand what marriage is, and would not be so afraid of divorce as at present. They are afraid of divorce, because they have not thought out what it means. They ought to be led gently up to it instead of being frightened at it.

19,005. I gather you think the grounds for divorce should be revised?—Having first of all educated the people into a true understanding of what the marriage contract is, then I think marriages themselves should be regulated more than they are at present by licences being refused to any people under age or who could not show that they understood in some quite general way what marriage means. I think it ought to be obligatory they should have certain means, a certain degree of physical health, and so on: inquiries should be made. Also, it would be useful, when you deal with humble people, that the officer should explain to them what the contract is they are about to enter into, and give such assistance as he can, so that they may see what they are doing.

19,006. You would suggest some revision of the grounds of divorce?—Yes.

19,007. Will you proceed upon that point?—I should be in favour of granting divorce for any clear breach of contract. Marriage is a contract, and if there is a clear breach of contract, that is strong *prima facie* ground in itself for a divorce. I regard infidelity as a breach of contract; I regard desertion as a breach of contract. I regard persistent cruelty as a breach of contract; I think bigamy is a breach of contract. For all those reasons I think, as a matter of sheer right, a divorce should follow, if asked for, and, of course, established.

19,008. What do you say about lunacy and crime?—I would not grant a divorce for crime. I think it is one of the incidents of life which are to be taken as they come, like disease or serious illness, and I think those kinds of things which do not show on the part of either party any wish to get away from the contract are just the things which test the value of the tie, and bring out the very best qualities of a wife.

19,009. Would it be true of a habitual criminal, or one who had been sentenced to a life sentence?—I should be sorry to say in no conceivable case a wife should not get a divorce, but I should proceed very gingerly with it. My sympathies are with the criminal, and keeping his wife.

19,010. What do you say about cases of life sentence?—There is no such thing as life punishment.

19,011. I said “a life sentence”?—I do not think a life sentence should necessarily be a ground for divorce. Lunacy is full of dangers. I have known cases where people have been condemned, I may say, as incurable lunatics, and have recovered. There is a certain danger about that, but if it can be conclusively and satisfactorily established that a lunatic is beyond all hope of cure, I think you cannot have a better ground.

19,012. You state one other cause?—You are alluding to the ground of incompatibility of temper.

19,013. It is the last one, No. 5?—That is what I mean. The view I take of that is this. This is a contract; *prima facie*, if both parties to a contract wish it to be rescinded, there seems more reason on the face of it to grant their request and rescind that contract than if one person wants it. By our law, as it stands, two people are not allowed to ask for a rescission of this contract; one is—it must be one—and that one is supposed to ask for it reluctantly with a certain degree of coyness, and with its hands before its face. The law grants it blushing. I think the common-sense view is, if both parties want the contract set aside, and can satisfy a court that they have done their best after years of endeavour to live reasonably happy lives together, and the contract has hopelessly broken down, and life has become absolutely unbearable, then that contract has failed of itself, and those parties should be allowed under very stringent conditions to get a divorce from each other.

19,014. Would you be in favour of placing both sexes on the same footing?—I have thought a great deal about that. I think the law has dealt so inconsiderately with women in all the legislation affecting the relations between the sexes that I should be very loth to see any grievance which a woman suggests as a grievance should not be redressed, but I venture to entertain some doubt whether to grant a woman a divorce from her husband on the ground of incidental infidelity would really meet with the approval of women themselves. It seems to me it is a woman's question. If a woman insists that she ought to have precisely the same rights as a man in this matter, I think her wishes should be met; but I cannot conceive for myself whether there is precisely the same immorality in the one case as the other, or not. The tendency of society, and by society I mean women who control society, has been to look far more leniently upon incidental lapses by the husband than upon one solitary fall by a wife. It is the difference of a lapse or a fall. Whether it is that in their profound knowledge of human nature they recognise that in most of these unhappy cases it is the woman who is really responsible, because after all there is no getting away from the fact that a woman has the last word in determining the character of an intrigue and what shape

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it will take, and believing, as I do, at all events in the truth that a man will not go further than a woman will let him, whether it is a recognition of these truths that makes women more tolerant of men's faults than of their own, I do not know, but I think it is a fact that women extend great indulgence to reproaches of the male sex, whereas they are very unforgiving to their own. They will forgive and even caress the erring husband, but when the poor little hen pheasant goes wrong they mercilessly peck her.

19,015. You think it is a woman's question?—Yes. If she can show she has a grievance by not getting a divorce on the simple ground of infidelity, I see no ground for not granting it. There are cases where a man in the character of an arch tempter will overcome the scruples of virtuous women. Those are cases which are hard, in which the wife ought to have redress. In the average number of cases women like to shut their eyes, assuming the husband is good in every other respect, if they can, to irregularities on his part, unless they are too pronounced and too frequent and too gross.

19,016. We are getting resolutions every day on the subject, which some time or other we shall have to consider. Then, turning to another part of the subject, with regard to the facilities of trial, I should like to hear what you say about that?—I may be prejudiced, but I am at a loss to imagine how you can expect or look for a more suitable tribunal to deal with these matrimonial quarrels, and worse than quarrels, in the poorer classes, than a London police court. We are in the closest possible touch with the poorer classes; I believe we have their confidence in a very singular degree; I do not think they know any law outside a police court; I believe they are perfectly content with our decisions. I recognise no inherent difficulty in trying a question of adultery more than any other question of fact, and reserving, as it would be easy to do, opportunity for appeals to the High Court, I do not see why you could like or wish to find a better or more suitable tribunal than the police court to deal with those cases.

19,017. Whatever tribunal were adopted, it would be your view that relief, if it exists, should be within the reach of the poorer classes?—I think that is an elementary right.

19,018. How long have you been on the bench?—I regret to say over 20 years.

19,019. Have you had any reason to come to any conclusion as to the effect on people who cannot obtain divorce at present, with regard to immorality?—The conclusions I have come to on that matter arise partly from personal observation and experience, partly from the great interest which I have taken in the Act of 1895, and watching to the best of my ability how it works; and my conclusions have been confirmed by direct inquiries, I have not made them myself, but which I have caused to be made among the poorer classes, to ascertain their real feelings in the matter. Thirdly, my conclusions have been assisted by letters, not a great many, but a certain number, which I have received from wives deploring that they have not facilities for divorce. Those are the grounds upon which I have formed an opinion that they ought to have these facilities. It is difficult to say how many cases one would have had if the law had been different, but I am led to believe that the judicial separations which I have dealt with, which I confess have not been numerous, would have been far more numerous, scores of applications would have been made by women who ask for judicial separations if they could have got a divorce.

19,020. Have you found, as the result of your experience, that not being able to get it has led to immorality?—Perhaps I had better give you my view of judicial separations as a whole.

19,021. Whichever you prefer?—I look upon judicial separations as a sorry substitute for divorce, but as being a great deal better than nothing. A judicial separation to my mind is in the nature of a medicine which secures instant relief. To that extent it is good. Let me put to the Commission how that comes out. What is the ordinary state of things in a police court?

A woman comes to me to-morrow morning if I am sitting, and she says: "May I leave my husband?" I say: "Yes." I point out she will have to maintain herself if she leaves without legal cause, but her great wish is to leave him. Then she comes to the second question, the one which is really in her mind: "May I take my children with me?" I say: "No." That woman goes away exceedingly sorrowful. What is the next step? She goes back to her husband—more black eyes, kicks, and brutality. What is she to do? She can come to the court and ask for a summons for assault, which she gets. In all probability the husband is convicted and gets six months; it cannot be more, I am sorry to say. That does not help the woman; she is deprived of her means of livelihood, and when he comes out of prison it cannot be supposed that his feelings are of a grateful or an affectionate nature; he is probably sulky and vicious, and the last state of the wife's life becomes worse than the first. She is driven, the ill-treatment continuing, to ask for a judicial separation. I think one of my colleagues said to the Commission he thought many of these applications were made on the spur of the moment. I do not take that view. If you think of the nature of the grievances which have to be redressed they shut out the idea that applications are made impulsively. A woman does not make an impulsive application if applying on the ground of persistent cruelty. She does not make an impulsive unconsidered application if deserted. These are long-standing continuing grievances. It is the last straw which makes the woman come. Let me impress this on the Commission. I am satisfied when the unhappy wife does ask for a judicial separation it is not her alimony she is thinking of for a moment. I do not think she will reject that; she cannot afford to do that; but what she chiefly wants is to get away from the violence and brutality. Rightly or wrongly, I can assure the Commission I never sleep so soundly after a day's work as when I feel I have separated some woman from a brute of a husband on grounds which are unanswerable and with which nobody can reasonably impeach. I feel I have done a charitable work more than a legal one, and I should rejoice more if, instead of being able to give that qualified partial relief, which only acts for a time and in the end often breaks down altogether, but which for the moment is good, if, instead of giving a judicial separation to a long-suffering wife, I could give what is at that moment her heart's desire, and what she deserves by the law of the land, a divorce.

19,022. Do you think from not getting that, immorality results, or not?—It is very difficult to say. Undoubtedly a young woman who is separated from her husband for life is exposed to great risks of immorality. I think that is undeniable, but I have no means of saying how many lapse into it. I daresay some do not and some do. There are, of course, the opportunities, undoubtedly, and these opportunities would be shut out, they would not exist, if the woman could have a divorce. There would be the road open for a happy re-marriage.

19,023. I suppose you would have the same ground for separation as for divorce?—If in the future there is to be no change, and divorce is to be denied to police courts, as I sincerely hope will not be the case, and things remain as they are; I would preserve judicial separations, because they give some relief, a momentary and pressing relief, but I would alter the law as to judicial separation. I would amend it. If there is to be no divorce I would give jurisdiction to police magistrates to grant separations for simple infidelity and incompatibility of temper conclusively proved; I would do away with the condition precedent which obliges a woman to leave her home before she can come to the court for redress, and I would not deprive her under any circumstances of alimony which had once been granted to her.

19,024. You say alimony should be paid into court, and not to the parties?—That would be an improvement.

19,025. Temporary judicial separation is useful as leading up to it?—Yes. If the police courts had power of divorce I think it would be beneficial and wise to

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grant a judicial separation in the first instance, to test the real feelings of the party, for a time, one year or two years.

19,026. You also say they are useful now in certain cases, but the general effect of them is to promote immorality?—The general effect is to open out risks of immorality. I do not know how far it leads to it, but it opens the door to it, undoubtedly.

19,027. Do you find the poorer classes do set store by marriage, and hold it in reverence?—They set very great store by it. I think marriage lines mean great value to these people. There is another way to test it. There is an immense deal of coarse language used amongst these people in a free and colloquial manner, but as far as I watch and observe, the term which stings more acutely than any other reproach that can be used is the term "bastard," and that shows in itself what importance they attach to marriage. I do not know how far it is relevant to this inquiry, but I think the bastard laws are in urgent need of reform. It is a cruel and humiliating thing which makes a young woman come into a court crowded with men and go step by step through every feature, phase, and detail of her betrayal and fall, and then be cross-examined on the top of that by a not too scrupulous advocate.

19,028. I will ask you about that. Would you be in favour of altering the law to legitimise the children in the case of a marriage afterwards?—Certainly; it is an imperative reform, I think.

19,029. Upon what you have said do you think it desirable that bastardy cases should be heard with closed doors?—They have lately established Children's Courts. I express no opinion, but assuming the principle of Children's Courts to be sound, I think it applies much more to the young women, especially in bastardy cases, who have to say these things. I would much rather see them with closed doors, for the sake of the girl.

19,030. Would you extend that to separation cases in general?—If they dealt with infidelity.

19,031. Or any case?—The separation cases at present are such things as desertion or persistent cruelty, or drink, and they do not open up matter which is objectionable to a public audience.

19,032. What was suggested by your answer was that a woman would have to come into court and detail these cruel acts?—I do not see the harm as long as they are not indecent or indelicate.

19,033. And if they were?—I am in favour of privacy. When it comes to the publication of these cases, I do not think it matters a rap to the public whether nauseating details are published or not; people of some minds will read them, others will not. The people I think of are the innocent relatives of the parties to a divorce suit. I think it must be painful reading to mothers or sisters to see in the papers these details published. I feel for them, and if for their sakes these reports could be suppressed it would be a good thing. There is plenty of prurient matter in a newspaper without divorce; a little more or less does not make much difference.

19,034. You are passing on to the question of publication. I was upon hearing cases privately. At any rate, as far as bastardy and indecent cases are concerned, you would be in favour of treating the matter on the footing of the Children's Courts?—I think I should.

19,035. Passing to publication, you really do not think it much matters?—Not as far as the public are concerned, and, with great respect to his Grace, I think it is always open to the Press to raise the defence that nothing they can publish is much more indelicate than the marriage service, so that if it is a question of poisoning people's minds, there is plenty in that service which might be well revised.

19,036. (Mr. Brierley.) I understand you propose that the police court should have jurisdiction in the matter of divorce, and also that the grounds on which you can grant separation orders should be grounds of divorce. Do you think that in a large number of these cases where separation orders are applied for, that divorce is a desirable remedy?—Yes.

19,037. We have had a good deal of evidence that

in a very large percentage of the cases the parties resume cohabitation and live more or less happy lives?—Let me say what I think about that. There will be a certain number of reconciliations, naturally, but judicial separation is an experiment. The woman who gets one has to contrast her life with what it was before she got it, and the effect of the black eyes wearing off and the trial of the life telling hard, with small alimony and children, she may say, "It is six of one and half a dozen of the other; if I go back I shall get more black eyes, if not, I starve. I will risk it and go back." But it does not follow that it is a permanent reconciliation. She goes back, but how long does it last?

19,038. It may last, but it may not?—She is between the devil and the deep sea.

19,039. You think the lesser evil would be that the marriage should be dissolved?—Unquestionably. It cuts the knot.

19,040. Undoubtedly, but the only question is whether it is desirable upon the whole, taking the interests of the country and of the possible effects it may have on the general view of marriage?—I think the tendency of cutting the knot is in the interest and direction of morality, because it opens the door for a re-marriage. The other has obviously broken down.

19,041. The other has obviously broken down for the time being, but we do hear that in a certain number of cases cohabitation is resumed, and a fair amount of happiness results?—I have no means of testing or arriving at any conclusion as to what degree of happiness is arrived at.

19,042. Are you able to follow up the cases?—Not enough.

19,043. We have a good deal of evidence of people who have been able to follow the cases?—I cannot say what happens afterwards.

19,044. You say every effort ought to be made to instruct the people of this country as to the real meaning of the marriage contract?—Yes.

19,045. I should like to know what you say is the real meaning?—It is a civil contract.

19,046. Purely civil?—Purely civil.

19,047. Not the same as any other civil contract?—Yes.

19,048. Why have a Divorce Court, because the ordinary civil contract can be put to an end by the parties?—I have already suggested what an admirable thing it would be if this civil contract could be put an end to by the consent of the parties.

19,049. You are in favour of a divorce by mutual consent?—Where the union has broken down and the life has become absolutely unbearable.

19,050. Assuming it to be the same as any other civil contract, it does not matter whether it is broken down or not, if both parties consent to put an end to it and wish no longer to be bound by it, they need not be. You do not propose to go as far as that?—I do, indeed. I go the full length if they satisfy the court.

19,051. (Judge Tindal Atkinson.) Supposing there is no police court to which the parties resort, would you in that case let the parties go to the country benches, or would you prefer the county courts?—I prefer the county courts.

19,052. Where there is no police court?—I have a predilection for the police court as a police court. I am only speaking of London, to which my knowledge is confined, where we are in close touch with the poor classes.

19,053. You say the police magistrate knows more about the people and is closer in contact with them than any other judge?—I think so.

19,054. When you come to country districts what do you say?—I know very little about country districts. I am a cockney. I do not know what happens. I should not think, if I may speak of them with ordinary respect, that the ordinary justice of the peace would be the best tribunal. I think you want a trained lawyer.

19,055. You think the county court would be preferable?—I think so.

19,056. (Sir Lewis Dibdin.) Why do you want a lawyer or any court at all?—I have been listening to

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your evidence. Upon your view, why should not people put an end to their marriage pretty much as they now enter into a separation deed? Why have to go to any court?—That is an ideal state of things you are sketching. Is it practicable?

19,057. Is it impracticable?—If it could be done I see no objection.

19,058. Towards the end of your evidence you say, and I think you said it with satisfaction, that the poorer classes set great store by marriage, and hold it in a great reverence. You told us in your graphic way the way they talk in your court about their marriage lines, and so on. Why should it be held in any reverence at all? It is a purely civil contract in your view?—But why not?

19,059. Nobody feels any particular reverence for a contract for a bicycle or a motor-car?—Perhaps “reverence” is the wrong word, and is poaching on a phrase which would be used for another purpose. I mean that they esteem it: they hold it as something which makes for the happiness and welfare of the community on well regulated lines, and ought to be preserved.

19,060. They hold it in high respect, shall we say?—Yes.

19,061. If it is a mere contract like any other contract of buying or selling, to be rescinded if it is broken on either side, or on mutual consent, I cannot see why any regard should be held for it at all?—For the reason that it is something better than promiscuous intercourse; it is a civilised proceeding. It is, at all events, something.

19,062. I could not follow your evidence as to the great blessing that a divorce would be to a young mother who had been deserted by her husband. You have told us about the young family, the children, and how she cannot leave them, and that she remains on until she is driven to come to you for a separation order?—Yes.

19,063. Supposing there is a divorce, you would agree that the chance of the man going on for all time paying alimony or an allowance to his late wife is not a very hopeful one. He would not do it, would he?—I suppose steps could be taken to make him, as far as possible.

19,064. Do you think that would be successful?—I do not see why not. Every case must depend on its own circumstances. You cannot do more than try and make him pay.

19,065. If that was done she would be so far from the same position as under a separation order?—No far.

19,066. If there were a divorce the added advantage to her would be the opportunity of entering into a fresh marriage?—Certainly.

19,067. You have had a great and long experience with the poorer classes. Do you think that a young mother with a lot of little children has a very good chance of finding a respectable partner?—That is best known to her and the partner she hopes to meet or catch. I cannot give any opinion. I do not see why her chance is jeopardised by the fact she has children.

19,068. I suppose the advantage of allowing a divorce instead of separation is that the man is certain to form a connection with a woman, and if divorced will be possibly a regular connection, whereas if not divorced it cannot be?—Yes.

19,069. Is it your experience that the ordinary working man can afford to pay for all time alimony to his late wife and support the new establishment which is your suggestion he should be able to make?—I cannot answer questions of that type. I do not know who he will meet, or what means she might have, or what the alimony might be. I do not say there are not any difficulties.

19,070. I am asking you as to his means. With our unusual experience of the poor, do you think that the ordinary working artisan—I want to take a case where a man is not very poor—can, as a matter of fact, support two establishments?—Of course, it will be more difficult to support two establishments than one. That is the risk he has to take.

19,071. If he cannot, either the second establishment would be as miserable as the first, because it was starved, or he would form no second establishment, but form an irregular union?—Precisely.

19,072. All these questions are addressed to this: what is the real concrete advantage of a divorce?—You have left out the wife who has got the divorce.

19,073. I dealt with the wife first?—Forgive me, you dealt more with the husband, but there is the wife: she has got her redress and her subsequent re-marriage, we may assume a happy one.

19,074. And marrying somebody who is willing to take not only her, but her family by a former husband?—They are not bound to re-marry. She has her relations. That is the point. What she does is for her to decide. She may throw away her advantages or consolidate them.

19,075. I want to work out the practical results?—It is so difficult.

19,076. On a different point I did not understand you. Is breach of contract the only point of view from which you allow a divorce, that the contract has been broken?—I did not say “only.”

19,077. Any other?—I think I mentioned them all. All I mentioned were all practical breaches of contract.

19,078. I thought your view was that was the exclusive ground. I do not wish to tie you to what you did not mean?—I have not considered too closely the grounds. I am content with the principle, and leave it to the authorities to regulate the details.

19,079. Breach of contract is a clear principle?—Clearly.

19,080. I am trying to see whether there is any other principle. Take the case of lunacy. I suppose there is no breach of contract there?—No.

19,081. You regard that as proper ground for divorce?—Yes.

19,082. What is the principle there?—It is tantamount, as far as the wife is concerned, to a breach of contract; the benefits of the contract are lost through no fault of hers. The results are the same.

19,083. So they are if one of the spouses becomes ill in a particular way, hopelessly ill. You do not regard that as ground for divorce?—Personally, I think lunacy is sufficient ground. It is arguable whether it is or it is not. There are very few cases.

19,084. You do not feel able to put it on any principle?—No.

19,085. (*Sir William Anson.*) You would like the marriage ceremony, the formation of the marriage contract, to be such as to bring home to the parties that they were making a serious civil bond?—Yes.

19,086. Why more so than in other contracts, except because it leads to the procreation of children?—I do not know about “any other contracts,” unless I have some particular contract to compare it with; but this is a peculiar contract; it concerns the masses; it is not a private arrangement between people here and there; it concerns the whole community.

19,087. If the making of it concerns the whole community, does not the dissolution of it also?—Certainly.

19,088. You would base that on mutual consent or wish to rescind?—Yes.

19,089. That would have to be expressed before a court of competent jurisdiction?—It would have to be proved.

19,090. You would not allow the contract to be dissolved as you allow a contract for the hire of a servant, an ordinary contract?—No, I should not care to compare it with any other contract. I think it is a fallacy to do that.

19,091. If you base the right to have the contract dissolved on the mutual wish to rescind, would it mean mere expression of the desire on the part of the parties, or would you wish the court to have other evidence?—The strongest independent evidence, whatever the court might decide as amounting to sufficient evidence; certainly not a mere expression of a wish by the two parties; it would have to be considered and investigated, and proved to the satisfaction of the tribunal.

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19,092. That the parties could not live happily together?—And that it was a *bonâ fide* application.

19,093. Would not there be a tremendous burden on any tribunal that had to decide whether a man and woman could not live happily?—I do not see why it should; I should have thought it easy of proof.

19,094. Take the case of a couple in tolerable circumstances; they lose their money, and the wife says, "I have been used to living in a certain position in society and to enjoy myself, now I cannot, and life is intolerable," and the husband says, "I can go on living happily." She goes to the court and says life is intolerable?—That would not be enough: it must be both who must come to the conclusion it was intolerable.

19,095. So that you would wait till the wife made life intolerable for the husband?—I do not think lives are made intolerable at the mere wish of the wife. I think there is a certain resisting power in the husband. I am talking of cases where notoriously the husband and wife cannot get on, where they have tried and failed, and to the knowledge of their friends and relations and the circles in which they move it is a fact. Another advantage is, if divorce was granted on that ground it would do away with a great deal of collusion. Collusion is the fault of the law. Once give divorce on reasonable grounds and you will have no collusion.

19,096. That is different from a mutual wish to rescind: it must be corroborated by the opinion of their neighbours?—I put it in the shortest phrasing I could. I am prepared to elaborate it if necessary.

19,097. As to the stipendiary magistrate, you think he would be the best tribunal?—I do really. I do not know what more you could wish for in London.

19,098. Considering that every decision would constitute a precedent for others, would not the tendency of the man who is so close to the life of these people be to be overcome with the facts of the individual case? You would get a number of hard cases resulting ultimately in the dissolution of the marriage by consent. I mean the stipendiary magistrate is so near to the facts and moves so much among these people, he would be ready to say these people cannot live together?—I have more confidence in the police magistrates. I do not think they would be necessarily exposed to that danger.

19,099. Do you attach any importance to the permanent character of the marriage tie?—I attach great importance to it. I would do everything in the world to encourage marriage.

19,100. As a permanent tie between man and women?—If it can be preserved.

19,101. Do you not suppose that the treatment of the subject which you contemplate would tend to make it a temporary arrangement?—No, I think quite the contrary. The object is to tempt people into matrimony, and you do if matrimony is not to be regarded as a trap which if they once enter they cannot escape from, but something from which they can escape on well ascertained and understood legal and reasonable grounds. I look upon divorce as a policy of insurance. I take it as a fact there is no marriage, however judiciously and carefully it may be arranged, whatever may be the absolute good faith of the parties to it, which is not an experiment. You cannot prevent it being anything else, and therefore I look upon divorce as a policy of insurance, providing an opportunity of relief and release to married couples who, through no fault of their own, without any moral blame, have come into contact with unforeseen difficulties and calamities which make married life intolerable, whether lunacy or cruelty, which could not have been foreseen.

19,102. In every case the court would have to determine the point at which the marriage was a failure?—That is what courts are for, in my opinion.

19,103. (Lord Guthrie.) You are in favour of divorce by mutual consent. Are you in favour of divorce at will?—I do not follow you.

19,104. On the side of either party?—One without the other?

19,105. Yes?—No,

19,106. Why not?—I prefer the consent of the two to the caprice of the one.

19,107. Is not the reason for your objecting to divorce at the will of one party because the State has a direct interest in the continuance of the married relation?—You mean the mere will?

19,108. Yes?—Not based on any ground of caprice?

19,109. Yes?—A mere wish to cut the knot?

19,110. Yes?—That is so startling it never occurred to me to consider that.

19,111. Supposing one person comes forward and proves to the court that the reasonable continuance of the married relation is impossible; the other person does not want dissolution?—One of the parties proves that?

19,112. Yes. The husband or wife proves what you have suggested in the case of the two coming forward. Why should not that one person, having proved what you have suggested would be sufficient, if both consented, have a divorce?—I do not see how it could be proved if the other person did not agree.

19,113. Why not?—If the husband says, "My marriage is unbearable."

19,114. And proves by outside evidence that his wife is such a woman that no reasonable man could be expected to live with her?—Suppose the wife says the husband is not a reasonable being?

19,115. You do not allow me to finish the question. If it is proved by evidence to the satisfaction of the court that no reasonable man could be expected to live with a woman, and she disputes it?—I cannot understand that being proved to the satisfaction of any court if the wife dissented.

19,116. Even by any amount of mutual evidence?—Not against the voice of the other party.

19,117. To what extent do you differentiate the contract of marriage from any other contract? What is, in your view, the element of difference?—I should like to have some particular contract to compare it with.

19,118. Any ordinary partnership. What is the essential difference? Is there any?—Essentially, no. In principle there is no difference.

19,119. Is there not this essential difference, that in every marriage the State, through the existence of children, actual or potential, has a direct interest? In a private contract it has none?—Yes.

19,120. Do you not think that is a very important difference?—Yes.

19,121. It is a contract creating a status which can never be gone back upon?—Yes.

19,122. Which we must give effect to to a greater or less extent?—I absolutely agree to that.

19,123. In your view, divorce is not a bad thing any more than the existence of the criminal court; it is a remedy for a disease?—Yes.

19,124. The disease in a specimen case being adultery, the remedy being divorce?—Precisely.

19,125. We have had a great deal of evidence that divorce in itself is a bad thing. You do not think that is sound?—I do not. I assume that to be almost the ultra spiritual view, which was knocked on the head by the Act of 1857.

19,126. You think that is a confusion of thought?—Yes.

19,127. In your view, whilst separation is a medicine—a palliative—there are many cases where you need a surgeon, and divorce is the surgeon as distinguished from the physician?—Yes, precisely.

19,128. You said the poor classes set store on marriage. We have heard a good deal about the submerged tenth in this matter. Do you think that feeling goes down even to the lowest?—I have not had any personal experience of the views of these people by talking to them. I have only got it from other sources, to the best of my ability. I have not asked them their views. I should not care to pit my opinion against those who have been in closer contact with them.

19,129. When you referred to the poor, it was a class above that?—Yes. I do not know where the

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submerged tenth begins or ends, but the poorer classes as I see them in a police court.

19,130. I mean the tramps?—The hopeless—I do not know their views.

19,131. It is the class above that that you think have a grievance in being deprived of a remedy for a wrong which is open to the rich?—I am quite satisfied of it.

19,132. (*Lady Frances Balfour.*) On the question of the equality of the sexes, I think you protected yourself by saying it was chiefly a woman's question; if women wanted it to be equal they should have it?—Yes.

19,133. And your opinion was that the women did not care so much?—I do not think they do.

19,134. You also suggested that they were extremely hard upon their sex and rather lenient to the male sex?—I have found so much indulgence from them.

19,135. May I suggest it is possible they expect more strength and more virtue from their own sex than their experience has led them to expect from the male sex, that theirs is a higher standard and not a lower one?—Very likely, and that is why they view any fall with such strong reprobation, because it is a greater fall from a higher standard.

19,136. That you have developed now. You say it is a higher standard and they expect more strength from their own sex?—I think they forgive men with more satisfaction to themselves than they forgive each other.

19,137. Because they look upon them as being a great deal weaker?—I do not know what their motives may be, but I am struck with their tender treatment of mankind.

19,138. We have had a great deal of evidence that women are feeling very strongly on this matter, and they do not agree with one suggestion which was made here, as it was expressed, that the wise wife shuts her eyes to the infidelity of her husband. We have had very strong evidence that they do not agree with that. I think you put it in this way, that they should be more forgiving for the reasons I have suggested?—I should be the last person to say they should be refused the removal of any grievance they feel which has any basis. If it is a grievance that they cannot get a divorce on the ground of infidelity, there cannot be any ground for refusing it.

19,139. It was that infidelity, if a grievance for one sex, is a grievance for the other. The grievance is the infidelity to the marriage vow and the marriage contract?—I can only speak as a man. I think the average wife does view with a certain indulgence, not the least with approval, but with a certain indulgence, a discovery she may make that her husband has been guilty of a casual infidelity. The same discovery made by the husband on the part of the wife would be a terrible discovery; he would have no longer any confidence in his wife. It is the difference between a lapse and a fall. Occasionally they may forgive their wives, but they feel the thing far more deeply than the wife feels it. A man's reputation in these matters does not stand so high as that of a woman, and when the woman goes wrong it is the shipwreck of the house and the establishment. A man has a greater freedom for doing evil than a woman.

19,140. Infidelity in the man produces more shipwreck of the woman's happiness, because her life is in her home, and if he brings her into contact with evil she suffers in the home, and she suffers more. The quality of mercy with her is a higher one. You say the average wife is more forgiving, but that does not prevent the average wife thinking if the law is altered it ought to be altered in the sense of making them equal; as it is in the superior part of the country, the North?—I should be delighted personally to see any grievance any woman feels redressed.

19,141. That it should be redressed in point of justice?—I suppose there was some reason for the distinction, when by the Act infidelity required to be coupled with cruelty in one case. I suppose those reasons were founded on some observation of human nature.

19,142. (*Sir Lewis Dibdin.*) It was a historical reason, I think,

(*Lady Frances Balfour.*) I think this country is the only one that requires it.

(*Witness.*) It was not an accident.

(*Chairman.*) It was very much considered in the debates.

(*Lady Frances Balfour.*) England is the only country which insists on having cruelty as well as infidelity on the one side.

(*Chairman.*) The Colonies adopted our law.

(*Lady Frances Balfour.*) Not all.

19,143. (*The Archbishop of York.*) I think you said in the course of your evidence that you regarded marriage mainly as a contract?—Yes.

19,144. You have also said you regard every marriage as an experiment?—Yes.

19,145. Would it be your view to combine those statements, and say in your judgment marriage is a contract to make an experiment?—It comes to that. I do not think you can shut it out.

19,146. In your view marriage is a contract to make an experiment?—Yes. I think that is a fair way to state it.

19,147. Therefore, if the experiment were to fail, the contract ought to cease, its object having failed?—Yes.

19,148. You also said in answer to Lord Guthrie that you regarded marriage as, at any rate, a status in which the whole community has an interest?—Yes.

19,149. How do you reconcile the statement that marriage is a contract to conduct an experiment which, therefore, ought to come to an end if the experiment does not succeed?—Not necessarily come to an end, be redressed.

19,150. The redress is for it to come to an end?—For certain reasons.

19,151. What other redress is there?—True, it must come to an end for some reason or other if it breaks down.

19,152. In what way does it involve a status in which the State has an interest?—The State has an interest in every marriage, as Lord Guthrie put it, for the sake of the children.

19,153. To make an experiment of life?—Yes; the experiment is involved in it. It is not made for the sake of the experiment.

19,154. What is to constitute failure of the experiment?—How is the failure to be discovered?

19,155. What constitutes failure?—The reasons suggested, infidelity, desertion, cruelty, and so on.

19,156. And, apparently, incompatibility of temper?—Yes.

19,157. Surely, if any person who was a party to the original contract to conduct the experiment feels it has failed, it is an injustice to make that go on?—If one person feels it has failed, and not the other, do you mean?

19,158. Yes. Why should one party to a common contract to conduct an experiment go on with it if the other party says it has failed?—You do not compel the other party to go on.

19,159. You insist on it being proved that both have come to the conclusion that the experiment has failed?—If both have come to the conclusion that the experiment has failed I would grant relief.

19,160. You will not if only one does?—I do not say I will not; on the contrary, one person can get it if he can prove adequate grounds.

19,161. You said over and over again, in regard to incompatibility of temper, it must be necessary that both should come to that conclusion?—For that ground alone.

19,162. Why, if both parties wittingly and knowingly entered a contract to make an experiment?—I do not think that is a fair way of putting it. They do not enter it in order to make an experiment; they have not an experiment in their minds when they make it, but it is wrapped up in it. It is whatever they wish to call it.

19,163. Both parties enter into it meaning it to be an experiment?—No, but unable to get away from the fact that it is an experiment.

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19,164. It is the fact it is an experiment; both parties entered into it on that basis, in your view?—Not on that basis. When parties enter into a marriage contract they would be only too glad if it was not an experiment. They do not want an experiment; if they could be assured of their happiness that is all they want; but they feel they cannot be sure, and to that extent it is an experiment, whether they wish it or mean it.

19,165. I find a difficulty in understanding on what ground you insist that both persons should be able to prove that their life is miserable?—I do not think one is sufficient.

19,166. I want to know why?—Because I think it requires two. You might as well say why does not one person make a marriage. It wants two on that ground to show the marriage has failed.

19,167. Does not that apply equally to the case of lunacy?—The lunatic could say nothing. If a wife asked for a divorce on the ground of her husband being a lunatic he cannot say anything.

19,168. You say that both parties must say they find life unendurable, and also the State must subject those statements to stringent inquiry?—The court, not the State.

19,169. Supposing both parties agree that their life has become unendurable, and are prepared to come into court to state it, why should not the State be satisfied?—Because they might say it for the purpose of getting a divorce to marry somebody else. It might be done in bad faith, therefore it ought to be investigated.

19,170. The mere fact they want to marry somebody else shows in their view their marriage has been a failure?—A great deal more than that would be required. It would not be enough to say "We want a dissolution because we want to marry somebody else."

19,171. Why not, if it is a contract which comes to an end if it fails?—I think the contract implies, unless there is some good reason they must stick to each other.

19,172. I thought you said the ideal state of things was that by mutual consent parties should separate?—I said two people should be entitled to petition for a dissolution of their marriage if they could show that living together was impossible and that life had become absolutely unbearable, that the marriage tie had broken down. I did not suggest they should say, "Because we both wish to marry somebody else therefore we want this marriage dissolved."

19,173. You were not speaking advisedly when you said divorce by mutual consent was the ideal arrangement?—I say it is as good a cause as any of the other causes usually suggested for dissolving a marriage.

19,174. If mutual consent is sufficient, why should the State require any evidence?—It is not merely mutual consent in the sense that for no other reason except caprice they want the union dissolved, but in the sense of having tried and tested marriage, it has broken down and made their lives miserable, and they both feel that it is a bad example to the children, and without any ulterior motives or thought of marrying anybody else, because they cannot endure each other's society, they ask for a release.

19,175. Why should not the State accept the statement of the parties?—The court?

19,176. Yes?—It is for the court to judge how much evidence they want.

19,177. Why should they want evidence beyond their statement?—That depends on the view of the judge. He might be satisfied or not.

19,178. Surely marriages would be dissolved, under those circumstances, under a great number of varying conditions all over the country?—I do not think there would be a great many.

19,179. Is it fair, when two persons come to the conclusion that their life is intolerable, that they should be compelled, on your theory of marriage, to drag into a public court details from their neighbours and the like about their squabbles and misfortunes?—They cannot have release for nothing. I should think they would probably consider it very cheap to get their release on those terms.

19,180. I think you said that you would feel it to be a great privilege, indeed, I think you said a joy, to feel you had been able to give relief to the unhappy couples?—I did.

19,181. And also you thought a court such as yours would be the best tribunal for deciding these questions?—Yes.

19,182. It would naturally follow that persons would be rather encouraged in your court?—I hope not. I hope it does not mean I show bias. I am expressing my personal feeling. I am glad when I have done such a thing, and satisfied my conscience it has been done for sufficient cause.

19,183. You would admit a good many other police magistrates would not take your view of the desirability?—I do not know how many remain to be converted to my views.

19,184. Meanwhile there would be a considerable variety among all the police courts of the country?—I am asked my individual opinion. I do not know what view other people may take. I believe in divorce.

19,185. That is obvious. You spoke of happy re-marriages?—Yes.

19,186. Would you include under that kind of phrase the re-marriages of guilty parties?—Yes. I do not see why guilty parties should not be happy.

19,187. You think it natural that persons who have committed sin, at least what we call sin, with one another before marriage should be encouraged in every way to marry again, and that should be considered quite satisfactory?—I do not see why not.

19,188. In regard to what you said about the bastardy laws, although it only indirectly bears on our subject, do you not think that the legitimising of offspring born before wedlock would have the result of further increasing the already large amount of pre-nuptial intercourse between persons?—I do not know what its effect might be. I think it is the right thing. I think it is cruel injustice upon the child.

19,189. You look at it from the point of view of the child?—Not entirely, but chiefly.

19,190. If that was to make persons anticipate the experiment of matrimony, would not that be rather serious?—It might be, but I think it would be the lesser evil.

19,191. You are aware in parts of the country the experiment is anticipated in this direction?—Yes.

19,192. Do you think there is any danger of increasing that?—I cannot tell. Those are questions upon which I cannot say. It might have that effect, but even if it had I should say the bastardy laws are harsh, and the position of a bastard cruel.

19,193. You would wish us to understand, sitting as you do, and bringing your evidence before us from your long experience, that what you have said on all aspects of the question, has been said after much thought and with deliberation?—Certainly, everything has been the result of a good deal of thought. I have taken great interest in this question, more particularly since the passing of the Act of 1895.

19,194. You also compared the marriage service in the Church of England in its effects upon public morality with the details published in a certain class of newspapers?—Perhaps I ought not, in your presence, to have alluded to the subject, but I have heard many people express the same opinion, and I think the candid view of it leads one to that.

19,195. It is nothing to do with my presence; it is the presence of the public?—I did not want to say anything to hurt anybody's feelings.

19,196. You wish us to regard as a sample of your carefully thought out views on the question, the statement that the moral effect of the marriage service was comparable to the effect of nauseous details in the newspapers?—I said the Press may say that.

19,197. You did not yourself?—No; and I think before you ask us to take the mote out of our eye you should take the beam out of your own.

19,198. It is your opinion?—I do not say the marriage service is as indelicate as certain details

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published in certain divorce cases, but if one requires revising, so does the other.

19,199. That is different from what you said before?—That is all I meant to convey, that it would be improved by revision.

19,200. (*Chairman.*) Whether your view is right or wrong about this point of incompatibility proved to the satisfaction of the court, do you know that has been put forward in certain foreign codes?—No.

Mr. FREDERICK WALTER BARNETT called and examined.

19,203. (*Chairman.*) Have you been a missionary at the Westminster Police Court for the past 13 years and probation officer of the court?—Chief probation officer.

19,204. Prior to that were you for four years missionary at the Edmonton and Enfield Petty Sessional Courts, and previous to that for four years and a half engaged in religious and social work of the Church Army?—Yes.

19,205. Have you had considerable experience with regard to the granting of separation orders?—I have.

19,206. During 1908 there were about 200 applications, and of these 66 summonses were allowed and 43 separation orders made?—That is so.

19,207. On the whole you think the system works well?—I do.

19,208. But it is your opinion that an order should not be made without an adjournment, in order that efforts may be made to effect a reconciliation?—That is so.

19,209. Would you give a power to make an order for payment to somebody in the meantime, before the order has been made? If you adjourn and the wife has nothing, what are you to do?—If the opportunity occurs, I have something to say about the granting of separation orders. Perhaps I may be permitted to deal with that presently.

19,210. I will follow your proof at present. We will take that a little later. At the Westminster Police Court in 78 per cent. of the cases where a man is the applicant, a reconciliation is effected through the efforts of the missionary?—That is so. I want to qualify that statement, in cases where men applied for separation orders on the ground of the habitual drunkenness of their wives, not in the case of women applying for separation orders on the ground of intemperance or persistent cruelty, but in the case of men applying for separation orders.

19,211. What percentage of reconciliations have you had in the cases where the woman has applied on the ground of cruelty or desertion?—I should say 40 per cent. altogether—I am not speaking without my book either—but in the case where men have applied it is 78 per cent.

19,212. That is only on the ground of drunkenness?—Yes.

19,213. Since the passing of the Habitual Drunkards' Act, 1902, have you, with the magistrate's support, been instrumental in preventing separating in 60 cases, where men have applied for separation orders on the grounds of their wives' habitual drunkenness?—I have.

19,214. In each case the woman consented to go to a licensed retreat?—Yes.

19,215. And I suppose ultimately reconciliation was effected when she was improved?—That is so.

19,216. You are in touch with 39 of these women who are living happily with their husbands?—Yes.

19,217. Do you find adultery figures as a factor in separation order cases?—No. During my 13 years at Westminster, and I have dealt with about 1,013 cases where there was matrimonial trouble of a kind, I have only known nine such cases.

19,218. What were they cases of?—Eight of the cases were where the men were guilty of infidelity, and one case where the wife had been guilty of infidelity.

19,219. You say, of the many men who applied to the court for separation orders there were five where the primary cause, in your opinion, of the drinking habits of the wife, was the husband's intimacy with other women?—That is so.

19,201. It is a long time ago since you offered your evidence to the Commission, and I am sorry your health has not been sufficient to enable you to come before?—I had great difficulty in coming here to-day. I am very much obliged to the Commission for hearing me out of my turn.

19,202. I ought to thank you very much for your attendance?—I only hope I have said something which has been of use.

19,220. Four of those men acknowledged their error and on the discharge of their wives from retreats were reconciled and are now living peaceably together?—The four in question are living happily with their wives to-day.

19,221. You say so few are the separation orders granted at this court to men that you are unable to quote a dozen cases where men have lapsed into an immoral mode of life after obtaining a separation order?—That is so.

19,222. Then, on the other hand, you know a large number of women who have obtained separation orders on the grounds of persistent cruelty and neglect, whose moral integrity is beyond question?—That is so.

19,223. The causes you specify as leading to separation orders are cruelty and neglect, intemperance, early and improvident marriage, and incompatibility of temper?—Yes.

19,224. Is there any demand amongst the poor, in your view, for divorce?—In my opinion there is none.

19,225. Have you never met with any case in which a person has thought it might be useful to have a divorce?—In my daily work amongst the poor, and constant visitation, I have never known yet a single case where a member of the poorer classes has expressed a desire to me, through domestic infelicity, for divorce, and that facilities for getting divorce were more come-at-able.

19,226. Have you had any cases in which it would have been a proper form of relief, although the desire had not been expressed?—I cannot say that, because I contend that separation would have met the evil.

19,227. Have you any religious or scrupulous ground against divorce altogether?—I cannot reply in the affirmative to your question.

19,228. You have no opinion one way or the other?—I have strong religious opinions, but I do certainly contend that there are some cases where divorce ought to be granted. That is my conscientious opinion.

19,229. On what grounds would you place that? What causes of divorce have you in your mind?—The one cause would be adultery—no other.

19,230. Not even long continued desertion?—No.

19,231. How would you deal with those cases of long continued desertion—say, five or six years of desertion, and no intention of returning?—In those cases I contend that the parties must suffer.

19,232. Why should they suffer?—I think that they ought to be prepared to suffer in the interests of the common weal, and for the sake of the maintenance of a high moral code in this country.

19,233. I appreciate your view, but I want to know how it prevents that moral tone to prevent a woman getting a divorce if her husband has set up a new establishment in America and left her?—I fail to see, after working amongst poor people all these years, what the advantage would be if you were to grant that woman facilities for obtaining divorce.

19,234. She might marry again?—I hardly think that is likely, when I take into consideration my daily experience amongst the poor. It seems to me that with women who have suffered in that way the old adage seems to obtain, "Once bitten, twice shy." It is an adage frequently used.

19,235. Do you find, according to your knowledge of the poor, there is any demand for greater facilities for divorce?—No.

19,236. Have you had any case of suggested divorce?—Not amongst the poor. I think all the nine cases were

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amongst the middle classes where a suggestion has been made.

19,237. To what extent has it been made amongst the lower middle classes?—I say in nine instances during the last 13 years in the Westminster Police Court.

19,238. Do you find the expense of attending divorce proceedings has led to unlawful connections in any case?—I have known that to be the case in a few instances only.

19,239. What would you fear if the divorce law were altered?—I certainly think any alteration of the kind would work havoc with the morals of our poor.

19,240. Are they very high now?—I say yes, most emphatically, among the poor as I know them.

19,241. There are points about desertion, which is dealt with at the foot of the page. What cases of desertion had you in mind upon that? Is that desertion at the moment, or desertion continued and persisted in for several years?—Principally desertion of the moment.

19,242. As to that, you think that would not tend to the promotion of morality?—Certainly not.

19,243. What do you say about cases where the desertion was such that the husband or wife, as the case may be, had gone for good and was not heard of again, or persistently refused to return?—In those cases I do not think there is any ground for granting a divorce, in the case of prolonged desertion.

19,244. You leave the parties exactly where they were?—I leave them exactly where they were.

19,245. You think ordinary cases of desertion happen from unemployment, stress of poverty, and misfortune?—Yes.

19,246. But less frequently among the lower middle class?—Yes.

19,247. With regard to the question of the two courts, the county court and the police court, which is the more acceptable tribunal?—The police court that is presided over by the stipendiary magistrate, as distinct from the court where you get the justices of the peace.

19,248. As regards publication in newspapers, is that a matter which is a good thing or a bad thing?—A very bad thing.

19,249. Have you come across instances which have led you to that conclusion?—In the home life of the people in the police division of Westminster I believe it has a very lowering effect so far as the morals of the people are concerned.

19,250. Do you think it tends to check immorality?—Not a bit of it. I do not think so. I would like to say one word about the granting of these separation orders.

19,251. If you please?—When I mentioned in my report that the granting of separation orders was beneficial, and on the whole there was no need for any amendment, I had in mind the administration of the law touching separation orders at the Westminster Police Court, but I say that, with an experience of some years at petty sessional courts, provincial courts, I view with grave suspicion the way these separation orders are granted.

19,252. Will you tell us a little more fully about it; it interests us very much?—At many of the petty sessional courts in the country sufficient caution and care are not shown, and although I depend largely for my information on press reports of police court cases, I have a long list of them. May I give one case in point. Here is a case which occurred on the 2nd of this month, at the Silloth Petty Sessions, in the county of Cumberland. On the 2nd of the present month a young woman who was married on the 1st January made an application for a separation order under the Married Women's Act, 1895. She summoned her husband for persistent cruelty. He was in regular work and getting a wage of 22s. a week, and she admitted in her evidence he was giving her 1l. a week, and that the offences were always committed when the man was under the influence of drink. The court of summary jurisdiction straight away granted a separation order, and ordered the man to pay a separation allowance of 3s. 6d. a week.

My contention is that was a very grave error on the part of the justices.

19,253. Are you taking that from the report in some newspaper?—I am taking the press report from the county newspaper, and I take that to be a fairly reliable report of the police court proceedings.

19,254. What is the name of the paper?—"The East Cumberland News."

19,255. Of what date?—June 4th.

19,256. That enables those who are interested to look into it?—My contention is this. Those cases used to occur in the petty sessional court where I was engaged as missionary, at Enfield, Edmonton, and Wood Green.

19,257. Having the facts of that case before you, how would that be dealt with at Westminster?—If that case had been brought before the stipendiary magistrate at Westminster, that woman would have been asked to apply for a summons for an aggravated assault, and punishment would have been meted out to that man. In all probability he would have been placed on probation, with a timely reminder that for any repetition he would receive severe punishment. And I contend if the good offices of the missionary and the probation officer had been enlisted, that separation might have been avoided. That is my contention.

19,258. (Mr. Brierley.) They do not state in the newspaper what the acts of cruelty were that the wife complained of; it is rather an incomplete report?—I think as a rule in these county reports you get the evidence. There is the cutting from the "East Cumberland News."

19,259. I thought you had read the report?—No, I am careful to take these cuttings from the papers and careful to keep them. There is one other thing I should like to urge, and that is this. In my opinion it would be an advantage if many of these separation orders were granted for a limited period, particularly in those cases where a man is charged with an aggravated assault, because it seems to me that it would give men engaged in similar work to my own a chance of effecting a reconciliation. There is one other matter I want to mention. I am in constant touch with the licensed retreats throughout England, and constantly visit them, and I am painfully aware of the fact that separation orders are being granted week by week in the courts of summary jurisdiction throughout England—it is not true of London—to men, on the ground of their wives' habitual drunkenness, without any use being made of that particular clause which enables the court to give the woman an opportunity of going away to a retreat for the cure of inebriety.

19,260. I do not quite follow you?—In many of the courts of summary jurisdiction in the provinces separation orders are being granted week by week, but the opportunity afforded to the wife of going to a licensed retreat and securing the cure for inebriety is withheld.

19,261. That clause is not put into active operation?—It is not put into operation, and frequently when visiting I find many women who, after a separation order has been granted by the court of summary jurisdiction, have made arrangements for their own reception and detention at the retreat, desiring a cure, and yet there is no opportunity for them to return to their husbands. Therefore, if you granted the separation order for a limited period, if there was improvement there would not be that finality, and there would be an opportunity of reformation and reconciliation.

(Chairman.) Does that clause enable the magistrate to send them straight off to a retreat?

(Mr. Brierley.) With their consent only.

(Chairman.) Is it right that that consent should remain?

(Mr. Brierley.) I should think not.

19,262. (Chairman.) Would it be your view that the magistrate should have that power independently of the consent of the wife?—With my experience at Westminster I should say it was hardly necessary. It is a noteworthy fact that of 93 cases at Westminster, 83 women have elected to go to a retreat, and at present we have 39 women back living happily with their husbands.

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[Continued.]

19,263. That is practically unnecessary, because it shows they will go without them?—Yes.

19,264. That is your remedy, rather than saying they should be permanently separated?—Yes.

19,265. Does that exhaust the points of your evidence?—The only other point is this, and I know it has brought much hardship: that when a separation order is granted, the order should come into force at the expiration of 7 days.

19,266. You may take it that has been brought before us?—Yes.

19,266A. (Mr. Brierley.) With regard to that Silloth case, the facts were rather bad?—That is so.

19,267. It is quite true she was only married on the 1st January, still she seems to have led a terrible life. He assaulted her on the night of the wedding, and three weeks after knocked her about and hit her in the eye, and the police had to be called in. He got drunk every week-end, turned her out one night when it was freezing, and she had to walk home to her father's in her night-dress; she was kicked and beaten, and she was afraid to live with him, and that was corroborated by two or three witnesses. It was a rather bad case—

(Chairman.) I am afraid you have not selected a happy example.

(Witness.) I contend that was a very bad case, but you must admit, judging by the press report, that the whole of the trouble was associated with the man's excessive drinking, and that his contribution to the upkeep of the house from that wage of 22s. a week was a liberal contribution.

19,268. (Mr. Brierley.) He was a shocking brute?—We have had men married two or three years with an equally bad record, but apart from the vice of excessive drinking, their lives have been well-ordered and they are excellent fellows.

19,269. (Chairman.) The point was, punish him?—You give an opportunity of effecting a reconciliation, and perhaps at some cost a trial to reform the man's character.

19,270. (Mr. Brierley.) One matter strikes me as remarkable. You say you have had 60 cases under the Licensing Act of 1902 in which the women have gone into an inebriates' home?—Yes.

19,271. They were proved to be habitual drunkards?—Yes.

19,272. You say in 39 out of those 60 cases the women have gone back and are living with their husbands?—Yes.

19,273. Do you realise that means in nearly 75 per cent. of these cases of habitual drunkenness there has been a cure?—Yes.

19,274. That is really very striking, if one comes to remember everything one has heard about the extreme unlikelihood of a woman being cured of intemperance when it has got hold of her?—In my reply to your question we have to discriminate, I think, between those women who are dealt with at the State reformatories and those who voluntarily consent to go away to retreats for the cure.

19,275. That is true?—I may say that I have brought with me to-day some of a batch of 25 letters, many of them addressed to the magistrates at my courts, from husbands who summoned their wives. There are three letters here, one where the woman was addicted to excessive drinking for no less than 15 years. She has left the retreat now 2½ years, and a permanent cure has been effected. I am not speaking without my book on the percentage of cases: they may strike one as being somewhat singular, but my contention is that the public view touching the cure of inebriety is confined almost to the treatment associated with the State reformatories, where the women are morally diseased in mind and brain for the most part before you undertake their cure.

19,276. I daresay there is a distinction between the two classes. I was not speaking so much of the public view as the medical view one has heard expressed. It is striking?—We are in constant touch with these women: we visit them at their homes, and I am cocksure of my facts.

19,277. (Sir Lewis Dibdin.) In that case you were asked about, what do you say the allowance to the wife was for maintenance?—3s. 6d. a week.

19,278. Out of 22s. per week?—Not including the man's overtime.

19,279. That was less than he would have had to pay under a bastardy order?—In all probability.

19,280. Is not one of your criticisms the ineffective way in which the man was dealt with?—Certainly.

19,281. Here is a man, a regular brute, having assaulted his wife again and again for six months, who is allowed to get rid of her at 3s. 6d. a week?—Yes.

19,282. You have had to do with a great many reconciliations after separation orders have been made?—I have.

19,283. I gather it is the result of your evidence, in a very large proportion of those the reconciliation is a real one?—Most certainly. I want to say this. Among the many cases I have known where women have obtained a separation, I have never yet known—I am speaking with care and caution—a woman in the Police Division of Westminster who has not been willing enough to return to her husband whenever he has shown signs of amendment or a desire to do better.

19,284. Supposing, instead of separation orders, those had been divorces, the result would have been disastrous?—Most certainly in all these cases where the women have gone to retreats, showing their desire to overcome the propensity to drink. When you think of the children, I cannot conceive what the results would have been.

19,285. Also in the cases without drinking there has been reconciliation where the husband has reformed?—Certainly. So very often with our assault cases at Westminster, as my magistrates would testify, they are associated with drink, and if you can by expostulation and entreaty get a man to leave the drink alone, you witness the desired improvement at once.

19,286. From your experience you are anxious not to make divorce too easy or undermine the feeling of sanctity that attaches now to the marriage tie in the minds of the class you are conversant with?—Yes, the poor in particular.

19,287. On the other hand, you would not say that it was right that there should be what has been called one law for the rich and another law for the poor?—No, but then my feeling is this: if you grant to the poor what you have already given to the rich by reason of their capacity for paying for divorce, it seems to me you only grant the poor a very doubtful privilege.

19,288. That being the law now, would you say—I do not want to put anything in your mouth—that it was right that a man should be debarred from a remedy—I may call it a remedy for the sake of a word—which the rich have, simply because he had not got the money to pay for it? The mere fact that he was a poor man ought not to debar him from something he would not be debarred from by law if he were a richer man?—Certainly that would constitute an injustice.

19,289. We should be misunderstanding your evidence if we took it to mean you wanted to discourage divorce by making the poverty of the man prevent his going to the court?—That is far away from my thoughts.

19,290. You said you would prefer the police court to the county court for these matrimonial cases?—I do.

19,291. You were thinking of separation orders particularly?—Yes.

19,292. I do not want to provoke you to a long statement, but why, in a word, is the police court better than the county court?—In brief, the magistrate is the very true friend of the poor of London. They turn to him day by day for advice and help and practical assistance.

19,293. Have they the same knowledge of the county court judge?—Not at all.

19,294. They do go sometimes to the county court?—Yes, but then it seems to me that the causes that take them there are associated with petty debt and the like. There is no parallel between the experience and

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circumstances that drive them there and the motive which brings them to our courts day by day.

19,295. You have great experience with regard to Children's Courts?—That is so.

19,296. Would it not be a good thing if all these separation cases and all the attendant applications for warrants afterwards, the whole matter could be dealt with in a court like the Children's Court?—On that question I would rather not give any opinion, because I have not given it consideration.

19,297. (*Lord Guthrie.*) Have you any experience of divorce cases or of the results of the divorce law?—None whatever.

19,298. You have not come across divorced persons?—Only two have passed through my hands.

19,299. The remedy of divorce would not be open for the poor. It does not arise?—No.

19,300. Is it your view that divorce, on the whole, does more harm than good?—I reply in the affirmative, and say "Yes."

19,301. You think it is a bad thing?—I think it is a bad thing. It may be expedient sometimes, but the result is bad.

19,302. It produces sin rather than anything else?—Most certainly.

19,303. If that is so, how do you justify extending it to the poor, when you think it produces such dire effects upon the rich?—My position is this. As far as I know of the people amongst whom I labour, there is no demand and no desire; and I must say the poor of the police division where I labour do look askance to-day at the person who has been divorced, even if they belong to a different station of life from themselves.

19,304. You think this Commission should not recommend what would tend to give divorce as a remedy?—Yes, emphatically.

19,305. Do you base your views on the religious question at all as to divorce?—Not entirely.

19,306. Partly?—Partly.

19,307. You would allow the present cause,

adultery, but you would not go beyond?—Yes, in very exceptional cases I would.

19,308. Is that on the ground of Christ's exception, the words, "save for fornication"?—Yes.

19,309. You said, out of 1,013 cases of people who were in bad matrimonial relations, you had only found adultery in eight of them?—I want to say where there is matrimonial difficulty of some kind—I am not thinking of infidelity—where there was a family and domestic trouble and misunderstanding.

19,310. I am assuming that. You do not say on investigation there would be only eight cases of adultery among that mass?—It would be very difficult for me in dealing with that mass of people to form a safe criterion of all those couples; but there was only that number where the source of the trouble was at any rate patent to me.

19,311. Whether it was adultery or not did not matter to you, because they could not get a separation for adultery, and they were not in a position to go for a divorce, so that it was not a matter you required to inquire into?—But in dealing with those cases the purport of my mission was not always the preventing of separation, and the like of that. I was brought into contact through children coming before the court, and a hundred and one circumstances.

19,312. I understand you do not say that adultery was only present in eight of the 1,013 cases, because it would be a very extraordinary suggestion?—I can only say in eight cases where the fact was borne in on my mind that adultery was the chief factor in producing domestic infelicity.

19,313. (*Mrs. Tennant.*) You find no demand for greater facilities of divorce amongst the poor, but some amongst the lower middle classes?—Yes.

19,314. Into which class do you put workmen earning about 30s. or 40s. a week?—I think that, perhaps, stupidly I placed them amongst the poor. When I refer to the lower middle classes, I refer to tradesmen, and professional men. I put them under that heading perhaps somewhat stupidly.

(*Chairman.*) We thank you for your evidence.

Mr. CHARLES WRIGHT called and examined.

19,315. (*Chairman.*) The questions which have been read in the case of several of the witnesses have also been sent to you?—I have had them.

19,316. But in your memorandum I think you have only answered four of them?—I do not particularly wish to deal with some of them, but I have an epitome I should like to give.

19,317. I have had handed to me a letter this morning addressed to the Secretary, adding certain matters?—Yes.

19,318. May I take your answers to the questions put to you which you have answered. You are also a police court missionary?—Yes.

19,319. Where is your district?—My district is in Chester, and extends about 9 miles one way and about 15 the other.

19,320. How long have you been at work there?—About 10 years.

19,321. Is your work done under the Church of England Temperance Society?—I was certainly engaged by the Church of England Temperance Society, but I work under an undenominational committee, consisting of Roman Catholics and Nonconformists, as well as Church people.

19,322. The first question relates to whether there is any demand for greater facilities for divorce amongst the poor and the lower middle classes. Will you read your reply?—I do not know that I have the reply, but I have a few comments.

19,323. We will take you upon that?—May I give what I have here bearing upon that point?

19,324. If you will add it as an explanation when we come to any question, that will be sufficient. You have had 30 years' active work altogether?—Yes. I have been connected with various institutions, workmen's organisations, and I have also had charge of a parish of 7,000 people as the lay worker.

19,325. You begin your memorandum by saying that the divorce law needs to be made to be more feared. Will you explain what that conveys?—It is difficult to deal with the poor and middle classes without asking a question as to what do we mean by "the poor"? I have consequently thought out this memorandum I have sent to the Commission by dividing up the poor into sections. I am fully convinced that the honest poor do not require any additional facilities, nor do the lower middle classes. I believe that quite three-quarters of what I call, putting the two classes together, the working and industrial classes, are true, honest, and moral, but I believe the other quarter can be divided into three other sections. I refer in one section to what I would call the "won't-works," and to the hypocrites, "spongers" I call them, those who sponge and take advantage of people without working, and doing everything they can do to deceive the people; but the class before that I have a note here is what is called "the clever workmen, but intemperate." We have many cases before us, and find them in all kinds of social work, where there are clever people, such as mechanics, and so forth, who are intemperate, and as a consequence they neglect their work half their time. They work one day and drink the next day, and instead of taking their earnings home, they only take a very small proportion, and that causes a very great deal of discomfort and misery, and leads eventually to an application in the courts.

19,326. Do you mind my keeping you to your proof. In the answers to the questions which have been put to you, you deal with the question as to whether or not there is a demand amongst any of the classes you mention for greater facilities for divorce. What is your answer?—I say emphatically, no. When I say "no" I mean as a general rule. There may be exceptions, and I believe there are exceptions, and those exceptions I prefer to deal with separately.

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19,327. Your answer is, "No, not a widespread desire, but some facilities special and inexpensive, "desirable in exceptional cases." That is what you wish to convey?—Yes.

19,328. In your proof you go on to say the divorce law needs to be made to be more feared. What do you desire to convey?—That there is too much careless and reckless dealing with the present way in which people are married.

19,329. Then it should be the marriage law that needs to be more feared?—Yes.

19,330. Because of improvident marriages recklessly entered into?—Yes. I believe it would be a very great boon to the country if there was a civil code drawn up that would be applicable to all religious bodies, or even to the Registrar's Office, in addition to the ordinary religious ceremony.

19,331. So that that should be preliminary to the religious ceremony, and those who wished to have a religious ceremony could have it afterwards?—Yes. The document having certain questions, could be signed before the one who performed the religious or registrar's duties.

19,332. Why would that be productive of advantage?—Because the people would enter into the matrimonial contract after more consideration, more especially if it were known that there should be punishment meted out to the man or imprisonment put upon those who break the contract.

19,333. Do you mean by that even if the religious ceremony is not sufficiently respected?—I mean it is not sufficiently respected by the other three classes.

19,334. Even though it has been of a religious character?—Yes.

19,335. How would you bring it home to them that it was the most important possible contract they could make?—By some legal document they would have to sign in the presence of the clergymen or whoever it might be; they would answer questions and sign it.

19,336. In substance it means, whoever does it, you would bring home to their minds more than now what is being done?—Yes, with greater force.

19,337. You would give imprisonment for a matrimonial offence?—I would make it so that there was liability to imprisonment.

19,338. It is no use making a liability unless you carry it out?—I take the general view of the courts. People come before the courts; they are liable to imprisonment, but many are dealt with so that they get no imprisonment. It depends on the nature of the case.

19,339. May I suggest the next sentence in your proof explains it, that the judge should have the option to commit to prison as well as to award damages in divorce cases?—That is so.

19,340. You say immorality is very prevalent. What do you put that down to?—Immorality is very prevalent amongst a certain section of the poor. I do dislike the remark that it is very prevalent generally amongst the poor.

19,341. Which section do you put it down to?—I put it down to the depraved section of the community, the "won't-works," and people of that class.

(*Str Lewis Dibdin.*) The one-fourth.

19,342. (*Chairman.*) You have dealt with the next point. You say some additional facilities are desired, but should be granted only under well-defined and guarded rules. Will you explain what you have in your mind in making that statement?—That refers to the exceptional cases.

19,343. Of what character?—Even amongst the three-fourths there may be exceptionally hard cases, because no rule can be laid down without exceptions.

19,344. Hard cases of what nature?—Where it has been proved after investigation that the man or woman should be separated, where it would be wise and beneficial that they should be separated or divorced, as the case may be, there should be facilities granted.

19,345. On what grounds?—The grounds might be misconduct or cruelty, or otherwise, because I am one of those who believe that there is as much difficulty in defining "cruelty" as "persistent cruelty," and cruelty

may consist of one act on the part of a man towards his wife.

19,346. Do you mean you would give that as a ground of divorce?—I would give it a cause for consideration in any case.

19,347. Consideration is one thing and operative effect is another?—I have it in my mind that we are dealing with the poor, who have not the facilities, and it should be open for the court to decide whether—I am speaking now of the police court—the evidence that has been given before the court is sufficient to justify a very hard case so as to send it to the higher court, for instance.

19,348. What causes would you think should be such as to justify sending to the High Court for divorce?—I certainly think misconduct is one.

19,349. And the others?—Cruelty under certain forms; it is difficult to say what kind of cruelty, but put it again as exceptional cruelty, very hard cases.

19,350. What do you say about desertion long continued?—I do not think desertion itself, speaking generally, should be a cause at all.

19,351. Do you think if it were long continued and persistent it should be?—If nothing had been heard of either one or the other for a certain number of years, or something of that sort.

19,352. Do you desire by "facilities" to convey the idea of a less expensive tribunal than the High Court?—My idea is that the facilities should be granted. I have it on my notes here. I have thought the matter out, and see very great difficulties in the way, but in some cases it may be possible for the magistrates to submit to the Divorce Courts in London a report of the evidence before them, and it should be for the Divorce Court to say whether on that, according to their experience, there should be a case; in which case, supposing the parties concerned were so poor that they were unable to pay, they should even have it free. Those are under exceptional circumstances. On the other hand, I think in deciding, that the man's earnings for the past six months should be a guide as to what the expenses should be.

19,353. You suggest there should be a probation officer to look into these cases under the Probation Act, and make all inquiries and report to the court?—Similar to that. First of all, I believe these applications for separation orders should not be made in open court until inquiries have been made, that applications might be made to the magistrates' clerk, and after the magistrates' clerk had taken the particulars, the magistrates might appoint an officer of the court, such as a probation officer, and that he should be empowered to see if some reconciliation could not be made, or at any rate to get all the particulars and submit them to the clerk, and when the case was called, then that officer should be made to give evidence, which would help the cases considerably. If that course had been adopted I do not think half the separation orders that have been granted up to now would have been granted.

19,354. May I take it, whether it was a case for separation or divorce, those special facilities should not be given without inquiry and recommendation?—Yes.

19,355. You say in your proof there can be no question that in some special cases divorce is desirable, and in the best interests morally and socially of the general community? Is that your opinion?—Yes.

19,356. You think it should never be obtained without the guilty parties being liable to imprisonment?—That is so.

19,357. With regard to publication, will you tell us your view?—I think the details of divorce cases should not be made public. I am firmly convinced that these details are read by a certain section of the community that are already sufficiently depraved in mind without reading these things, and I believe that those people who read these details are people that will give up anything to read them, and practically revel in it.

19,358. You think they are an incentive rather than a check to immorality?—I am certain of it. I would like to say, with regard to the publication of particulars;

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[Continued.]

taking the press as a general rule, it must be considered that most of the newspapers cater for a particular section of the community, and, therefore, they must publish sensational news in order to create the sale for that paper. There are many papers which only give a very short *resumé* of a case of that kind, and those are the papers you will find in the best of the working-class houses.

19,359. May I read the next paragraph in your proof, because I think it summarises the points you desire to present. "I feel that it would be to the general advantage of all if the present system of granting separation orders was amended. Cases for separation should not be heard in open court, *i.e.*, should be placed under much the same rules as the present Children's Court. The public are never better for and are often worse for the hearing of miserable details connected with such cases, details made miserably bare in open court." Is that the result of your experience in all these years?—Yes.

19,360. You think it would be a great benefit?—I am absolutely certain.

19,361. Would you apply that also to cases if they did go to the High Court for divorce?—I would, and most emphatically if I could, if it was within the scope of applying it, to courts relating to affiliation orders.

19,362. Which are very much allied in detail to the separation and divorce cases?—I think they are worse very often, more corrupting.

19,363. Your point is that sexual and matrimonial troubles had better not be heard in public?—I think so.

19,364. You say at the end of your proof that in every case the law and rule of the church should be kept always in view. Will you explain what that contention is?—I say that as a member of the Church of England. I feel that the sanctity of the marriage tie should be kept well in view in inquiries both in court and out of court, and that should be pressed well home by the missionary officer in making his inquiries; I believe if that were done it would be very much better. If a Roman Catholic, I take it it would be something in the same way.

19,365. I think that covers all your proof?—I would like to raise a protest against some of the general remarks that have been made. I disagree most entirely with the remarks made by Mr. Justice Bagnall Deane, for instance, about the wise woman.

19,366. Might I ask whether you are sure of the judge you are speaking of?—I ought to correct myself and say I disagree with some of the remarks made before the Commission, without mentioning names.

19,367. I do not mean to say you should not mention names, but I think you ought to mention the right one. Do you mean the point of the equality of the sexes?—I

mean the remark that a wise wife will shut her eyes to misconduct.

19,368. That is the point. Would you place the two sexes on the same footing?—I would, yes. I do not believe it is possible for a wise wife to wilfully close her eyes to misconduct. I do not believe it to be in harmony with the contract, or the national idea of home life; I believe it is contrary to the marriage vow, and absolutely contrary to all that is pure in respect to our national life. There was also the remark made by someone else, speaking very generally, that the poor attach no sanctity or, if any, very little, to the matrimonial tie. I believe the poor as a whole attach very great respect to the matrimonial tie.

19,369. Have you anything else you would like to add?—I think I have gone through most of it. Might I say, in support of my three-fourths, for instance, having had such a wide and varied experience amongst the friendly societies and various organisations, such as the temperance societies, the Y.M.C.A., and so forth, that the idea that there is a demand is absolutely contrary to the facts brought before the people in the shape of thrift and their desire for mutual self-help.

19,370. (*The Archbishop of York.*) What you have said about recommending in every case that parties to the marriage should be asked to sign some legal form is very interesting. Do you mean that even those who were married in church should be obliged to sign some declaration as well as say it?—I do.

19,371. You think in that class of people the signing would carry with it a greater sense of the importance of what they were doing than saying it?—Yes, and I believe a copy of that should be sent to the civil authorities.

19,372. In your intercourse with working men you have had something to do with friendly societies. Have you heard them bringing forward the point that there ought to be imprisonment in some cases for guilty parties in divorce suits?—No; it is entirely my own view, and I believe it would be the wish of the bulk of the working classes. I have mentioned my views to quite a number of representative members of different societies, and all acquiesced in a desire of possible imprisonment. I believe there is a depraved section of the community which, unless it is taken in hand, will corrupt the good manners of others, and is corrupting the good manners, and more especially with regard to the education system.

19,373. (*Lord Guthrie.*) In Chester do the London Sunday papers circulate?—Yes.

19,374. Largely?—To a very great extent.

19,375. (*Mr. Brierley.*) There are also some Liverpool and Manchester Sunday papers?—Yes.

19,376. Which also contain a good many reports of divorce cases?—That is so.

Mr. JOHN MASSEY called and examined.

19,377. (*Chairman.*) You are a police court missionary?—I am.

19,378. Have you been so for 20 years at Old Street and Worship Street, in London?—Yes, Shoreditch.

19,379. Have you had considerable experience in that capacity as to separation orders?—I have.

19,380. You say in your proof on the whole the system works well?—Yes.

19,381. Do you find any fault with it in any particular which it would be of assistance to us to point out?—I think that provisional orders should be made. I should be in favour of making an order for three months or six months or nine months.

19,382. A temporary order?—Yes.

19,383. Would you hand the case over to one of the probation officers in the police court and see what became of it?—Yes.

19,384. Would you have the parties come up again before the magistrate if no reconciliation were effected?—Yes, but not necessarily.

19,385. But that there should be the opportunity?—Yes.

19,386. You say there should always be an adjournment for, say, a fortnight after evidence given, before the order is made?—Yes.

19,387. Would you make it provisional that the husband should pay something?—Yes, in all cases.

19,388. Do you find that the orders in fact work out as if they were temporary in most cases?—Yes, from a few weeks to one year.

19,389. What happens to those cases which do not end in the parties re-uniting?—That never come back again, do you mean?

19,390. Yes?—In some of the cases there have been immoral relations formed—in the case of men. Taking 100 cases with which I have had to do, ten wives and four husbands formed an immoral connection.

19,391. Have you any idea how those cases of ten wives and four husbands compared with the number of cases in which they did not return to each other? The 100 include reconciliation cases?—Yes.

19,392. Can you tell me to what number of cases, where they have not rejoined, those figures of ten and four relate?—I should say that half of the 100 cases have been reconciled.

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Mr. J. MASSEY.

[Continued.]

19,393. And out of the remaining half — ?—The ten wives and four husbands have formed immoral relations.

19,394. That seems a different proportion to what we have had ?—I have taken 100 particular cases.

19,395. You find more of the wives have gone wrong afterwards than the husbands ?—In our district.

19,396. You have had fully 50 per cent. of the orders superseded by reconciliation ?—Yes.

19,397. And about 1,000 applications a year are made, but only 1 in 10 are granted a summons at all. They are choked off at the beginning ?—Yes.

19,398. Being frivolous, I dare say ?—In many cases.

19,399. On one occasion you took a note of the number of persons during a period of 14 weeks who applied to the magistrates, and there were 383 ?—Yes.

19,400. What was the result of the 383 applications ; was only a small proportion granted ?—I did not take a note on that point.

19,401. You wish to put in a little table ?—Yes. For the three years 1907–1909, 317 summonses were granted, but only 144 orders were made. Taking one year's out of the three :—

January.	Summonses granted, 15.	Orders made, 8.
February.	" 6.	" 3.
March.	" 9.	" 2.
April.	" 4.	" 2.
May.	" 12.	" 8.
June.	" 7.	" 2.
July.	" 4.	" 2.
August.	" 4.	" 4.
September.	" 8.	" 2.
October.	" 6.	" 5.
November.	" 8.	" 6.
December.	" 16.	" 11.
	99	55

19,402. The general effect of your evidence seems to be many applications for summonses are made and refused because they are frivolous ?—Yes.

19,403. When the summons is issued orders are sometimes made and sometimes refused ?—Yes.

19,404. Where they are made, you then find reconciliation ?—Yes, in some cases.

19,405. In a certain proportion of cases you find they do not come together ?—Yes.

19,406. Why do you say in these cases where there are children you would order the husband to take one ; supposing he was cruel or drunk, why should not the wife, who was better, have both or all ?—I should make an exception in some of the cruelty cases, but I think generally that to have charge of one of his children would tend to keep the husband from drifting into lodging-house life.

19,407. There is nothing in the Act at present to tie the magistrates to make an order for custody of the children in favour of one or the other party ; it is discretionary ?—The course I suggest is not often followed.

19,408. That is a suggestion which may require alteration in the law. You say in your opinion the demand for greater facilities for divorce is exceptional amongst the poor and lower middle classes ?—They are exceptional cases.

19,409. Of what character ?—They are cases of men earning 20s. to 30s. a week. There are some hard cases.

19,410. Can you tell us of the kind of case you call "hard" ?—There is a case of a man who is a clerk. The wife is young, and has three children. She obtained a separation order, and he went and lived with her sister and is living with her sister to-day, and they have two children. I think that is a very hard case.

19,411. Has that case been brought before you as one in which she wants a divorce ?—Yes, she cannot obtain it.

19,412. Is her pecuniary position such that she cannot obtain it ?—She earns 10s. a week, and has the three children.

19,413. There may be hard cases. You say in your proof the following are the chief causes leading up to applications for separation orders :—Drink and cruelty, desertion, too early marriages, lack of knowledge of each other, mismanagement at home, bad company, and the club-life of the husband ?—I have three cases of separation now, and the separation was brought about entirely through the club-life of the husbands. I may say I act as third party in nearly all the cases at the court in receiving the allowance that is made and paying it over to the wife.

19,414. You next proceed to consider desertion. Do you think that should be made a ground of divorce ?—I do not think so.

19,415. Even if prolonged for several years ?—No.

19,416. Have you any cases of the people going abroad and never being heard of ?—I cannot call to my mind any at present.

19,417. With regard to the courts, you think the police court is preferable to the county court for these people ?—I think so.

19,418. Because the officials and magistrates are more in touch with them ?—Yes.

19,419. Do you think it is possible that they get too closely in touch with the people to see the questions of divorce from the broader aspects ?—I do not think so.

19,420. With regard to publication, are you against or in favour of allowing the newspapers to publish these details ?—I think all cases of divorce should be reported, and the names given, but with regard to the details I should say no.

19,421. Do you think they exercise a bad influence ?—Yes.

19,422. Will you let us know the facts on which you allege that opinion ?—I know a great number of factory girls and boys, youths in the district, who read these cases.

19,423. Have you come across those cases actually yourself ?—Yes.

19,424. You have a note of a general character on the state of morality. What do you put all these troubles in life you meet with down to, broadly ?—Drink is at the bottom of a great deal, and unemployment, and the way the people live—in one room or two rooms.

19,425. You mention the lack of home life ?—Yes, the lack of home life.

19,426. The parents are indifferent, and the boys and girls have a sad disrespect for their parents. That refers to a general state of bad morality, a low standard ?—Yes.

19,427. Little sense of responsibility for children on the part of the parents, and so on, and the desire to get rid of their responsibility altogether. Do you find that is extensive ?—A great deal.

19,428. Placing their children in schools and reformatories ?—Yes.

19,429. What is your point about parents coming to court with children of young age ?—Frequently both fathers and mothers come with their little ones to the magistrate and make an application and say, "Your Worship, I cannot control this boy ; I cannot control this girl," children merely of 9 or 10 years of age. I have seen great big men come into court with a boy, holding a boy by the hand who is 10 or 11 years of age, and saying, "I cannot control him."

19,430. What does the magistrate do ?—Sends him away about his business.

19,431. Does he suggest some physical application ?—He does sometimes.

19,432. Is that the remedy, or what is it ?—No, I think we have to go further back, right back to the beginning of the home life.

19,433. Perhaps you would explain your view about it ?—I think there ought to be more care before marriage is entered into, and I think if young men and women took a great deal more trouble to find out each other, what their habits are, what their health is, and so on, that that would tend to alter the home life, and we should not get so many applications for separation orders.

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[Continued.]

19,434. How would you propose that the State should help to do that—I mean the Legislature?—I do not think the Legislature can do very much.

19,435. You are really pointing out that people must work in the direction of an improved state of morality—legislation will not help?—No.

19,436. (*Sir Lewis Dibdin.*) I suppose a very large sum goes through your hands every year for maintenance to be paid under separation orders?—About 600*l.* or 700*l.* a year.

19,437. You have a great experience as to that?—Yes.

19,438. Are the orders generally obeyed in your district?—In a good many cases. I think a third party helps to get the money from the husband better than if he had to pay direct to the wife.

19,439. And, I suppose, prevents the husband exercising undue pressure upon the wife?—Yes.

19,440. Either by coercion or frightening her?—Yes. Many of the wives have complained before I have taken in hand this work, that they had to go to the publichouse in order to get their money.

19,441. In your experience are most of the reconciliations that take place real reconciliations?—Yes.

19,442. At any rate, they are not caused by the difficulty of getting money out of the husbands?—No.

19,443. I do not think you finished your evidence about the parents who bring their children to the magistrate and tell him they cannot manage them. You said they were sent about their business. That is, no doubt, the wise course which the magistrate adopts, but it is not the course the parent intended him to adopt. What the parent intended was that the boy should be sent to an industrial school at the expense of the State?—That is so.

19,444. (*Lord Guthrie.*) You give the causes which you think chiefly produce matrimonial difficulties. These, I suppose, are what you think are removable causes?—Yes, some of them are.

19,445. You will always have the weakness of human nature and the force of sexual feelings distorting the intellect; these will always remain?—Yes.

19,446. (*Mrs. Tennant.*) Is it in your experience that youthful marriages are provoked by discomfort in the home, and that the boy or girl is anxious to get rid of the surrounding worry and annoyance?—I think that is so in a number of cases in districts like ours, which is a very low district.

19,447. It does emphasise the influence of housing conditions?—Yes.

19,448. Do you say that housing conditions have also a considerable influence in promoting immorality?—I think so.

19,449. There are conditions which are such that there cannot be any decent life?—Yes.

19,450. (*The Archbishop of York.*) I was interested in what you said about putting club life as one of the reasons why separations occur. How is it you think club life is a cause of separations?—The husband spending all his time, or most of his time—all the time

he can get—at his club, without giving any attention to his home or his wife and children. I am speaking of certain clubs.

19,451. I gather the clubs you mean: you mean that drives the wife into drink?—It does in some cases, and sometimes drives them to other things.

19,452. In regard to the housing question leading young lads and girls to be anxious to have homes of their own, do you say in your part of East London that the facility with which young lads and girls can get fairly good wages, which are not followed up in later life, accounts for first getting married very young and then coming into difficulties when children come?—I think so.

19,453. In that part of the world the best wages are got when they are quite young?—Yes, under 18 years of age.

19,454. They marry on the strength of that, and then find that the home is difficult when children come later?—Yes. May I add one word with regard to reconciliations. One never need despair with regard to getting the men and women together again. I have a case I should like to mention of a young woman 23 years of age; she had been married four years, and had had three separation orders in that time. She had three children. She had summoned her husband 16 times for arrears, he had been to prison seven times, and she had been in the workhouse seven times. I only found out a month ago that those people were living happily together. In this particular case the cause of the trouble had been removed by the death of the mother-in-law.

19,455. (*Chairman.*) Have you anything else to add?—Yes, there is just one case I should like to mention with regard to parents coming to the court with their children. I have a case in point. This is from a newspaper report, but I sent the report myself, so I know it is correct. This was a mother who came with her little offspring; he was only 10 years of age, and this was the character she gave the boy: "He is 'beyond our control'—referring to the father and herself—"he steals money, and has stolen his brother's boots, stays out at night, plays truant, picks the lock "when I lock him in, breaks the door when I lock him "up; he has been caned by me, strapped by his father, "punished by his schoolmaster; he has been taken to "school by me; he has been taken to the police "station, but they would have nothing to do with him: "he was brought before your Worship just before "Christmas, and you would have nothing to do with "him."

19,456. What did they do with him?—In this case the boy was sent away to a school.

19,457. How was it in the other case you came to let the mother-in-law stay so long?—I cannot answer that question.

19,458. Was she removed by the parties, or by death?—She was removed by death.

(*Chairman.*) We thank you very much indeed for your evidence.

Adjourned.

Winchester House, St. James's Square, London, S.W.

TWENTY-NINTH DAY.

Wednesday, 15th June 1910.

PRESENT:

The RIGHT HON. LORD GORELL (*Chairman*).

His Grace THE LORD ARCHBISHOP OF YORK.

The LADY FRANCES BALFOUR.

The Right Hon. THOMAS BURT, M.P.

The Hon. LORD GUTHRIE.

Sir WILLIAM R. ANSON, Bart., M.P.

Sir LEWIS T. DIBDIN, D.C.L.

Sir GEORGE WHITE, M.P.

Mrs. H. J. TENNANT.

EDGAR BRIERLEY, Esq.

J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

(*Chairman.*) It was suggested that Lord Salvesen's evidence as to figures should be checked. We have now had a letter from Mr. J. Patten MacDougall, who has been through the figures and checked them. I will read an extract from the letter: "Dear Mr. Gorell Barnes—With reference to my call on you when in London a short time ago, I ought to put it on record officially, as I mentioned to you then, that the statistics contained in Lord Salvesen's evidence, of

" which you were good enough to send me the notes, appear, after perusal in this department, to be entirely accurate, and to correspond with the information with which, as Registrar-General, I am supplied regarding the decrees of divorce which are granted by the courts in Scotland." The point was that the statistics for Scotland had to be checked, and they have been checked by the Registrar, and he says that they are correct.

Mr. WILLIAM FITZSIMMONS called and examined.

19,459. (*Chairman.*) You have been working for something like 20 years in the East End as court missionary at the Thames Police Court, Stepney?—Over 21 years, and also as probation officer more recently.

19,460. Since the passing of the Act?—Yes.

19,461. You commence your proof by saying that the matrimonial troubles of the lower middle classes brought to the notice of the court in your district are comparatively few. What do you mean there by "the lower middle classes"?—I should say those in receipt of a regular wage of over 2l. a week.

19,462. Does your next answer deal with all the class you are familiar with, or only the lower orders?—With the lower class.

19,463. Will you tell us if your views are based upon your experience as to their views about morality?—I am afraid they have a different code of morality from those in a higher station in life. They are guided more by heart feelings than intellect.

19,464. Why do you think that they have that lower code?—I think very largely owing to the circumstances of their lives.

19,465. Does the religious idea prevail amongst them at all?—To a very small extent. I am referring, of course, to what might be described as the casual labourer.

19,466. I gathered that was so. I will take you to the questions which you have been asked. They are the same questions which have been put before other witnesses. The first is with regard to whether there is a demand for divorce amongst the people. What is your answer to that?—A demand exists, but not to any great extent.

19,467. Which class of people are you now speaking of?—The casual labouring class.

19,468. What would you say about those a bit above that?—We have so few coming under the notice of the court, I am afraid I could hardly express an opinion.

19,469. Your experience does not range amongst them?—Our court is situated in the heart of the East End, and we have only the working class of people coming to it.

19,470. Do you find there is some demand, but not to a great extent, even among those people?—Yes.

19,471. Can you indicate to what extent that matter has come before you?—The demand?

19,472. Yes?—I have recently taken the opportunity of asking the opinion of some women who come before the court, and I have jotted down their answers.

19,473. Since when have you done that?—Since the Royal Commission commenced to sit. A woman, aged 39, who had been married 19 years and had 10 children, complained about her husband who was drunk every night. He had assaulted her frequently; she had had a cut on the top of her head and over her eye, and six stitches were necessary. He would not support her. She had been twice in the workhouse through neglect; the second time she was an inmate for seven months. The guardians did not prosecute, although she told them where they could find him. I said, "If you had the opportunity of asking for a divorce, would you?" She said, "A divorce costs money; I would rather have a separation": those were her words. Another case was a woman, aged 23, who had been married 4½ years and had three children. She had been frequently assaulted, and was deaf through a blow in the ear, had had her nose broken, and had suffered from illness in consequence of her husband's misconduct. I put the question to her, and she replied, "I have not the means. I would forgive anything but the filthy names he calls me; he laughs at the idea of my having to go into the workhouse." Another woman, aged 25, had been married six years and had two children. Her husband deserted her and went to America and remained there a year. He sent her a dollar occasionally. He returned home and then deserted her again, and was summoned for desertion. Her reply to my question was, "If I had the money I would; he will not keep me; I could work for myself." Another was a case of summons for arrears and an order made on the husband for desertion. He was then living with another woman, by whom it was alleged he had four or five children. The wife said, "If I had the divorce I would not get any maintenance for my children; I have no means; I am depending upon my people now. I shall wait till baby is older." Another was a woman whose husband was habitually drunk, drunk almost nightly, and guilty of the most filthy habits. She complained to the court, and before a summons was issued in that case I was

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[Continued.]

asked by the magistrate to see the man. I did. I found him in bed in a state of drunkenness at 3 o'clock in the afternoon, and he could not speak to me. The room was in a most offensive filthy condition in consequence of his habits. That case has been before the court, and is now adjourned on the promise of the man to give up the drink. I am still in touch with them.

19,474. (*Sir George White.*) Did you put the same question to the woman in that case?—Yes. She replied, "I would take a divorce if I could get it. I am 'afraid to live with him alone.'" Another was a case of desertion. The man was living with another woman, and yet he wrote a most affectionate letter apparently to his wife, signed, "With fondest love, your loving husband," and so on. He was living then with another woman. I asked the wife the same question with respect to divorce, and she replied, "I would have a divorce if I could get it, but I would have no allowance then for the children": those were her words.

19,475. (*Chairman.*) She probably was wrong in her law, but that does not matter?—That is so. I have just given you her words.

19,476. Are those typical cases, or have you others?—I have one more.

19,477. Have you any more you wish to present to us, or are those typical?—Those are typical cases of large numbers we have.

19,478. How many have you altogether to whom you have put that question?—I have one more record, but I have spoken to many other cases of which I have not made any note.

19,479. What is the general result?—I should say, perhaps, half of them would say, "I would like to have 'it if I could, but I have no means.'" Some would say, "No thanks, I don't want a divorce; I have had 'enough trouble with the one I have had.'" Another would say, "I don't want to marry again; I have had 'enough trouble with my present husband.'"

19,480. It does not follow that they need take another. Question 2 is of a similar character, with regard to the expense. Will you read your answer, it explains itself?—Yes. The expense attending divorce proceedings is, for the poor, prohibitive. I have known at least 50 such cases.

19,481. Are those cases before you made these inquiries, or do they include the cases you inquired into?—Before.

19,482. Question 3 is as to the effect of desertion. I should like to know whether you are speaking of desertion operating at once or after a long period of years?—Desertion after a certain period, perhaps not so long as a period of years.

19,483. Will you read the answer?—Desertion undoubtedly does lead to a large number of unlawful connections. Casual acts of adultery by the husband without desertion are often borne on the part of the suffering wife.

19,484. You say that is your experience, although you consider that question is outside the ken of a police court missionary. Why is it outside?—It seems to me to ask me to give the result on a supposition.

19,485. Question 4 is as to whether there should be an alteration of the law in the manner indicated. By including desertion as a ground of divorce, would that effect a loosening of the tie of marriage?—My reply is, No. In this district the religious sanctity of the bond being practically non-existent, the change could make little difference. I may qualify that by saying that I do not think it would make any difference upon those who now consider the binding character of the marriage tie. I do not think it would affect the opinion of those who respect the tie.

19,486. To those who do not it would make no difference?—That is my opinion.

19,487. Question 5 is: If divorce were made cheap and were allowed in cases of mere desertion, would the result in your opinion tend generally to the promotion of morality amongst (a) the poor, and (b), the lower middle classes, or in an opposite direction? Will you give your reply?—It would lessen the number of unlawful connections. I do not consider that the existing state of morality would be affected to any extent; yet

at the same time I might add I do not believe the poorer classes are waiting to rush into the Divorce Court if they had the opportunity. I think their feelings of restraint are sufficient to prevent them rushing in wholesale and asking for it as many seem to think. I do not think they would.

19,488. If the opportunity were given, I gather in the instances of hard cases you have mentioned it might be used?—That is so.

19,489. Question 6 is as to separation orders—whether they work well or ill?—I cannot say the granting of separations by magistrates works well or ill. The system may be considered a necessary evil. One extreme difficulty magistrates have in dealing with such cases is the lack of legal representation. The difficulty of getting details, which are often vital, is very great.

19,490. Do people fight these cases themselves?—That is so; very rarely are they able to employ legal aid.

19,491. They have not the money?—That is so.

19,492. We were told by someone the husband often had enough to find the legal aid and the wife was at a disadvantage?—It was suggested yesterday that 10l. might be fixed.

19,493. Keep away from the cost. It has been said as things are at present the husbands often get represented by a solicitor, but the wife has not the means, and therefore is at a disadvantage?—I have known cases of that kind.

19,494. Have you a remedy to suggest for that part of the matter?—Unless there is a provision such as was suggested some time ago by the Legal Aid Society, under Sir Charles Matthews, providing a poor man's lawyer for each court.

19,495. What is the suggestion of Sir Charles Matthews? We have not had that here?—He is the founder of the Legal Aid Society. I attended their meeting, and it was mentioned there that it would be desirable for the poor to have the assistance of a solicitor to represent them.

19,496. Is that Sir Charles Matthews the Public Prosecutor you are speaking of?—Yes.

19,497. To what extent has he gone into this do you know?—I could not say.

19,498. Then Question 7: In what proportion of cases of application for separation orders which have come under your notice have you had reason to think a divorce might have been claimed had the parties been able to afford the expense. What do you say to that?—In the case of applications by men against their wives I should say 20 per cent.; applications by men are comparatively few.

19,499. You have not dealt with the first part of your answer?—Although many cases of applications for separation have been made on the ground of desertion in which adultery might have been proved, yet the duration of the desertion would not have been sufficient to be the ground for divorce under the present law. I would say in applications by men against their wives 20 per cent. and in applications by wives against their husbands in 5 per cent., adultery alleged or actual was a factor.

19,500. Question 8 is as to the number of cases withdrawn without the order being made, or the parties have been reconciled before an order. What is the answer?—In the cases, of applications by women, separations, through the intervention of missionary or other friend, have been averted in 60 per cent. of cases. In applications by husbands respecting the habitual drunkenness of wives, I should say 5 per cent. have been averted.

19,501. The next question deals with what has happened after an order has been made. Will you read your answer to that?—In separations granted on the ground of persistent cruelty of husbands, 50 per cent. If on the ground of desertion, 15 per cent., not more.

19,502. That means that percentage has been reconciled?—That is so.

19,503. Question 10 is in what proportion of cases of separation orders which have come under your notice has the order been followed by or preceded by an adulterous connection?—My answer is, where the

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[Continued.]

separation is granted on the ground of desertion and it remains absolute, at least in 75 per cent. of the cases on the part of the men, and in 33½ per cent. on the part of the women.

19,504. What number of cases have you taken in arriving at that percentage?—My general knowledge of the cases that have come before me—the years I have worked there.

19,505. Have you any idea of the total?—I have a table for the last 10 years.

19,506. May I see what it shows? This only gives the orders made, and the different grounds of the orders for those years?—Orders made.

19,507. In each year, and the cause of making it?—Yes.

19,508. It does not deal with this particular point we are on, as to how many of those cases resulted in adulterous connections?—No.

19,509. May I take it the 75 per cent. and the 33 per cent. are based upon the totals you have in this paper?—No; I arrived at this conclusion before I drew up those figures.

19,510. How do they support it or affect it?—I do not think it altered it in the least. My opinion has not been changed by the figures.

19,511. You give the proportion where unlawful connection precedes separation?—Yes. Where unlawful connection *precedes* separation, I should say the proportions would be as follows:—

	Men.	Women.
"Desertion" -	30 per cent.	Very rare.
"Cruelty" -	20 "	Perhaps 10 per cent.
"Neglect" -	25 "	" 5 "
"Drink" -	20 "	" 5 "

19,512. The general effect of that is that there is impropriety before any order is made. In the percentages you have given of after the orders are made, you find the percentage you have already stated?—That is so.

19,513. What is your view, broadly speaking, as to the operation of the separation orders which you have just shown?—I look upon them generally as a necessary evil, I am afraid.

19,514. Would you do anything to amend the practice?—I have some notes of suggestions I thought I would like to make.

19,515. If you please?—I had other notes which I thought would bear on the question. I do not know whether I may go through them in the order in which I have them.

19,516. Perhaps we may finish the questions first. I am only asking you for anything that elucidates those questions?—Respecting separations, I think they should not be abolished, but that they should not be granted where limited by time. I would not have a time limit, say, a separation granted for six months.

19,517. Why not?—I think a separation if granted at all ought to be absolute. If there is a time limit put in, there might be a temptation to grant a separation in any less serious case. I consider it should take effect at once, and that the separations should not be rendered void by a return on the part of the wife to cohabitation—I refer to the order for payment on both points.

19,518. The order for payment should run on although they return to cohabitation?—That the order should still exist although the wife has returned.

19,519. So that if the man went off again there is the order all ready?—That is so.

19,520. Would you suggest she might apply to the magistrate if she liked?—Decidedly. I think it would be a wise provision that it should not cease for any rate, say, a period of three months after returning.

19,521. Then the parties should hand it in to be cancelled?—Exactly. The result would then be registered.

19,522. Have you any further note?—I think the magistrates ought to have power to grant separation in the case of continued adultery. I have had some painful experience of cases where wives have suffered illnesses in consequence of the misconduct of their

husbands, and have not had the means to go to the Divorce Court, and would have been glad to have had a separation from their husbands. Some have said, "I am afraid I shall be ill again."

19,523. That might be remedied by an application to the Divorce Court if means were afforded?—I think also that the magistrates have power to deal with it on the ground of cruelty at present.

19,524. You would add adultery?—I would, without illness, and that the orders in cases of persistent cruelty should be made payable to a third party, the court missionary or the probation officer. At present I am receiving money from a number of husbands by order of the magistrate, which I pay over to the wives. It is a wise provision, because they pay up better. The order is more obeyed by the men, and they do not like the court to know that they are not obeying the order and not paying the money. The same should apply to orders of affiliation.

19,525. It gives the court an eye to it all the time?—That is so.

19,526. Do you wish to say anything else on this head?—It was suggested that separations should not be granted, but the people should be put under the probation officer. In my view that is not necessary, because the magistrate has power, as he frequently does, when the summonses come up for hearing, to adjourn the case for a month or two months, and this gives the court missionary the opportunity to do his utmost to bring about a reconciliation.

19,527. What happens to the money in the meantime? There is no power to order the money to be paid during the adjournment?—There is no remedy for that. That would only come when the order was made.

19,528. Why not make an order for payment during the adjournment?—I think it would be better if it could be arranged amicably, and the husband brought to agree with the thing rather than be compelled to obey the order of the court. Then, respecting the arrears, wives are often kept waiting for the payment of their maintenance at street corners, and have to meet the men at public-houses, and so on, and they are very frequently starved into submission. When the husband refuses to pay, the wife is in a state of starvation, and goes back hoping for amendment, and frequently she is treated worse than before.

19,529. You get rid of that by the payment through the probation officer?—Largely, I think. I think the magistrates might have the option, too, to attach wages. I think that would have a deterrent effect.

19,530. May it not knock the wages on the head altogether, making the employers discharge them?—Possibly in some cases, but I think the magistrates would exercise a very wise discretion in attaching the wages. They would consider that point, I think. I have known where wives have been driven to misconduct through non-payment of the order of the court. They have children to be kept, and they cannot find work, and they must live somehow.

19,531. Does that finish the points you have with regard to separation orders?—Yes.

19,532. The eleventh question is as to the causes which lead up to separation orders. Will you read the answer?—Absence of pure motive in marriage, which is often forced through approaching motherhood. Overcrowded homes, lads and girls thrust out to find homes of their own at too early a period in their lives. Drink in some cases, neglect on the part of the husband, lack of domestic training on the part of wives; sometimes drink on the part of wives, and frequently interference by the wife's family.

19,533. Question 12 is, Would the county court be a better tribunal than the police court?—In London I should say emphatically for the poor the police court would be the more acceptable tribunal; possibly the county court for the lower middle classes, and in the provinces also the county court.

19,534. You have the stipendiaries in London?—That is so.

19,535. They have a closer knowledge of the poor?—They sit in the morning as poor man's lawyer, and give legal advice; they are really friends of the poor,

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and are trusted by them. They have their confidence. Their advice is sought on a thousand and one subjects—advice which is always generously given. They have intimate knowledge of the lives of the poor, and are more approachable, I think, than the county court judge.

19,536. Question 13 is as to the publication of reports of cases and what effect it has. What is your view?—My answer is Yes, decidedly, it does exercise a corrupting influence, and in answer to the second part I say I do not believe it does act as a check upon immorality.

19,537. Have you had much experience that leads you to form that conclusion?—I cannot call to mind any case I have met with, where a man or woman, boy or girl, became a criminal or were corrupted through reading the papers, but, to take the opinion of the district, the opinion is that the details of divorce cases have a corrupting influence.

19,538. How have you gathered that?—In conversation with people I meet, fathers and mothers, and so on.

19,539. You have a postscript to your answer?—Yes. I would recommend that the power of arranging legal separations outside the tribunal of a court should be abolished.

19,540. Do you mean that they should not have power to agree?—Yes. I think all cases should come before a court.

19,541. You cannot prevent people agreeing things. You mean whatever they agreed, they should be able to get the court afterwards to look behind the agreement?—There are many cases where they have means. They are drawn up by a solicitor.

19,542. You cannot stop people doing what they wish to. You can say, "Although you have agreed, the court may go behind it"?—Yes. I think those cases ought to be recognised by the State. They ought to be registered.

19,543. Would you give the magistrate power to cancel it if he thought right?—I would.

19,544. As you intimated, you have some additions to make. If you have anything to call attention to before questions are put to you, perhaps you will do it now?—With regard to those applications, I have made a note of those in the last week made before the court.

19,545. What do they show? What is the point you want to make?—Applications respecting domestic troubles.

19,546. What is the point you want to bring to our attention in consequence?—The large number of cases of trouble that there is in the home, which causes the wife to ask advice or seek relief.

19,547. What is the total for last week?—I have not that separately. One day there were 28 applications, of which 13 were respecting domestic troubles. The day following there were 18, nine were by wives in respect of their husbands, and so on. The next day there were 17 applications, of which six were respecting these troubles. The next day there were 15, and seven referred to these troubles. On one day there were 21, and 12 were with respect to troubles of that kind. Another day there were 41, of which 13 were with reference to these troubles, and on another day there were 25, of which 12 referred to these troubles.

19,548. Is there anything else you want to bring out?—I have suggestions with regard to marriages, improvident marriages, and failure of marriages.

19,549. If you please?—I think frequently improvident marriages are brought about, I must acknowledge on the part of the men, through passion—absence of pure motive. Another cause, I think, is pressure, as I have said, through approaching motherhood or the threat of proceedings for affiliation. Then there is overcrowding, which I have already mentioned. That applies to both sexes. There is the hire-purchase system, which I should like to see done away with—the ease with which they are able to provide a home, getting 10*l.* worth of furniture for 1*s.* 6*d.* a week.

19,550. What would happen if that ease were not given to them?—I think it would make them consider the question of saving up and trying to provide a

home. I agree it would be difficult to stop it, but I think it is an evil.

19,551. Do you think it would lead to immorality beforehand, without any marriage?—I should hardly say so. On the part of the women I should say it is the desire for a home and a partner to keep it, and her consent is imprudently given in consequence. There is one reason which comes very frequently before us, and that is, "I married him in order to give the child a name." That strikes at the root of a very large number of the failures of marriage—the question of approaching motherhood.

19,552. We know that point. What do you suggest should be done about it? Do you say it should not be allowed, for instance?—I am afraid on that point it is difficult to make a suggestion that would stop it. Respecting the failure of the marriage after it has taken place, my experience has shown me that where the wives have a fair regular income they seldom trouble the court with their domestic troubles. I find an adequate regular income largely minimises the risk of petty domestic differences, which lead up to applications for separations, becoming magnified. Our people—I am speaking about my own district—have no certainties to live upon; their only certainty is the uncertainty of finding employment to-morrow. The struggle for existence, the effort to find money for rent, the absence of means and opportunities for healthy relaxation, hope so often deferred—circumstances such as those force the feeling of sanctity aside. On the part of men, there is lack of self-control, satiation, neglect of the wife, and drink. On the part of women, there is absence of tact in managing their husbands, lack of knowledge of housekeeping and cookery, interference of relations, and occasionally drink; generally there is the absence of sanctity in the marriage contract or in the home. Home life is practically unknown.

19,553. We quite realise those extreme—horrors almost; but the point is, have you any legislative suggestion to make? They are mostly economic questions which can be dealt with by the general progress of the country. Have you any legislative suggestion to make in connection with it?—I would suggest that I prefer marriage should take place in church rather than at a registrar's office, and that at the time the man or the woman give notice of the marriage they ought both to be compelled to attend, and should then be supplied with a document or a booklet, pointing out the seriousness and the solemnity of the proposed contract, also giving the legal and moral responsibility incurred in the union. I think something of that kind should be drawn up officially and supplied to them. I think it would be a good thing to ask for the signature of both parties. I would have a separate one for the wife also, and have them both sign them before the marriage was allowed to take place. It would give them something to think about.

19,554. You want to bring it more home to them that they ought to realise what they are doing?—I believe it would. There are many things which would never occur to them, which they would think about if brought before them in that way. I have referred to the difficulty of the wives presenting their cases to the court. It is pitiable for one who knows what they have suffered to see them try to put their case. They cannot see the legal aspect of the case, and the magistrates and the clerk are often at their wits' ends to get at the facts; yet I have seen frequently the hardships a poor woman endures and her forbearance and patience before she comes to the court. Their endurance of filthy talk and disgusting names in the presence of children which is often worse than blows. I am proud to say many of them are nature's noble women and deserving of all praise for what they endure before they come before the court. I may point out that frequently single women who live irregular lives are legally and financially as well off, and sometimes better off, than the wife. They have their freedom, and they are entitled to orders for as many children as they have up to 5*s.* a week, whilst the married woman has to endure cruelty, drunkenness, and starvation, and often the stigma of pauperism before she can get an order. With

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respect to desertions, I should like to see wilful desertion with neglect to maintain made a criminal offence. The position to-day is, a woman is deserted and she makes an application to the magistrate. In the majority of cases they are referred to the relieving officer. He does not want her; his duty at present is to keep her off the rates. If she is admitted to the workhouse, in some cases she is allowed to remain indefinitely, no steps are taken; if not admitted she is referred back to the magistrate, and the woman does not know what to do. If she is admitted, she is obliged to herd with the promiscuous numbers in the workhouse, the imbecile, the servant out of a situation, the prostitute recovering from disease, the paralytic, the epileptic, and so on, and I think for many a woman, unless she has sunk to a hopeless condition, the association of the workhouse is the most humiliating experience of her life. I think it is a cruel thing that they should be driven into the workhouse in order to have their legal remedy. I have had cases where they have said, "Why should I bury my days in the workhouse?" "None of my people have been in there yet. I would rather die first." I have had them fall from sheer exhaustion in my room at the court, women who have had a baby in their arms and trying to feed it, rather than go into the workhouse. I have known many cases where, under the threat of prosecution, the husband has taken his wife out of the workhouse and then left her in the street. I think in those cases I should have a note of the application made at the court, and I would have a notice served upon the relieving officer directing that he should act, or at any rate make inquiries into those cases. At present they are simply referred to the relieving officer. There is no order upon him to do anything, and he shuffles his responsibility on to somebody else, and refers the woman perhaps back to the court again. I consider that desertion is more detrimental to the marriage tie than cruelty or drunkenness. It is only a criminal offence now if they become chargeable, or where they have children, under the Children's Act, where neglect comes in. Then they are liable for from six months to two years. I would give power to a committee to imprison in addition to or in lieu of an order for maintenance. I think it is not right that every soldier or sailor should be allowed to escape responsibility, or the order by a magistrate for a paltry payment of 3d. a day, which is the rule at present. No larger amount can be recovered from a soldier or sailor, and if that is not paid there is no remedy, because they cannot be arrested. Where a reservist or ex-soldier or sailor, who was entitled to a pension, deserted, I would give the magistrate the power to attach the pension, on behalf of the wife.

19,555. (*Mr. Brierley.*) That always is paid. The 3d. a day may not be a great deal, but it is sent by the commanding officer?—But where a magistrate gives an order for 3s., all the woman gets is 1s. 9d. a week. That is my point. In the cases of cruelty I do not think it is right that the wife should be compelled to leave her home.

19,556. (*Chairman.*) I think we understand that point?—Then in the case of habitual drunkenness, I would give the magistrates power to commit to a reformatory or a retreat at first, in lieu of an order of separation, and after that in addition to an order. Then with respect to affiliation or maintenance orders, I think steps ought to be taken to make them mutually recoverable in the Colonies or at home. We have cases of men who desert their wives. Only last week we had a woman who came to the court whose husband had left her in the middle of April and said he was going to Chatham to look for work. She has not seen him since. He is a reservist, and is entitled to a pension or pay from the War Office. She wrote to the War Office asking if they knew anything of him. They replied he had sailed for Canada at the beginning of May, and referred her to the Pensions Pay Officer in Canada. In that case it rather suggests that the man has taken another woman, because he has stolen his wife's birth certificate and also her marriage certificate. In that case the wife has no remedy except the workhouse. Respecting the question of divorce

generally, I would say, most reluctantly, with Mr. Rose, the magistrate, that it is desirable in some cases. It is not so much a question of demand. I think the poor should not be denied the benefit of any law by reason of poverty. Respecting the question as to whether there is any demand for it, it ought to be remembered that the poor have known that the question of divorce was so far out of their reach that the idea of asking for the thing never occurred to them. With regard to children, it seems against the spirit of Christianity that innocent children who are born illegitimate should for ever be treated as outlaws. I would like to see the possibility of children, through the marriage of the parents, eventually having the benefits of legitimation.

19,557. Do you think that would lead to the parents living unlawfully?—If it did in some cases, I think it would have a good effect in others. I agree with what Mr. Plowden said yesterday respecting the word "bastard." There is no more offensive word in the language, and there is no more offensive word than that which can be applied to a woman. Take an East End woman. That word will rouse her fury quicker than anything. I think that word ought to be done away with altogether. I think that is all I have to say.

19,558. Why do you come to the conclusion that legitimation by marriage would not tend to antenatal immorality?—I do not say that it would not in any case, but I think the good resulting from it would be greater than the evil.

19,559. The good would be chiefly the children's good?—Exactly.

19,560. (*Sir George White.*) You have given us a very interesting, but at the same time a very sad side of life. Of course you are aware, as far as we can make any recommendations they must be practically legal?—Yes.

19,561. Is it your opinion that either courts of summary jurisdiction or any extension of the divorce laws can materially touch the condition of things you have depicted to us to-day?—I am afraid that I cannot say any recommendation you can make would deal with the material points. The matter is beyond the scope of the present inquiry. Yet those conditions are largely the cause of matrimonial troubles that come under the notice of the court.

19,562. You suggest as one palliative that habitual drunkards should be sent to a retreat in lieu of an order being made?—Yes.

19,563. Have you had any experience of the result of inebriates going from these retreats?—Yes.

19,564. Do you think the results on the whole are commensurate with the expense?—Not in the case of those committed to a reformatory, but where they go voluntarily, good has very frequently resulted.

19,565. What has been the term of confinement in these retreats. I mean the average term?—Twelve months.

19,566. You know a number of cases that have been permanently reformed?—I do. I am afraid I cannot say that there have been many of those committed by order of the court.

19,567. It is within your experience that a good many of these early marriages, which we all know of, are responsible for a good deal of domestic unhappiness afterwards, are practically forced upon the young people by the parents in the desire to get them out of their home from lack of accommodation?—Yes, I entirely agree that is so.

19,568. Do you think efforts such as you would make for pressing upon the parents the reasons of this step are some methods by which this might be reduced?—When I suggested that, I had in mind more the couple that proposed marriage—the man and the wife.

19,569. It is within your knowledge that very often young girls, for instance, are encouraged to marry by their parents at an early age when there is no provision for setting up a proper home?—Very often.

19,570. The statistics you gave us in regard to domestic troubles, which show in your recent experience about half the cases which came before the court were domestic troubles, were women who came simply for

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advice?—That is so. I find the proportion varies from 10 to 50 per cent. of the total applications.

19,571. They were not cases to adjudicate on by the magistrates?—No.

19,572. They were cases in which advice was sought?—Of the applications made, the magistrates would not grant summonses in more than one in eight, and of the summonses granted, separations would be granted perhaps in one in four.

19,573. Were these applications made with a view to getting summonses?—Yes.

19,574. Not only advice?—More frequently applications for summonses; sometimes for advice.

19,575. You advocate that adultery should be a ground upon which permanent separations could be made in courts of summary jurisdiction?—I do; but I might qualify that, I think, for what might be described as continued adultery.

19,576. Not for a single act. You say there are different views of morality in the lower orders as against those in a better condition of life. Is it not impossible to prevent that with those different views existing so long as the housing conditions are as they are in many cases?—I agree.

19,577. The housing conditions break down any rigid views of morality?—That is so.

19,578. (*Sir William Anson.*) At the beginning of your evidence you gave cases in which a woman might have had a divorce if she thought it was not beyond her means?—Yes.

19,579. Those were cases of cruelty and drunkenness?—Yes.

19,580. Would you make those grounds of divorce. Do you think it would be desirable that a woman should be able to get a divorce on the ground of cruelty?—Not generally, but I think I would concede it in a very extreme case of cruelty.

19,581. And in the case of drunkenness?—No.

19,582. Continued drunkenness?—No.

19,583. Either husband or wife?—No.

19,584. What remedy do you suggest?—I look upon the case of drunkenness as a possibility of reform. I have had a man who has been before the court over 400 times.

19,585. And yet was reformed?—Yes. He was 35 years in prison, and that man has now for over 11 years gone absolutely straight.

19,586. You would in certain cases make cruelty a ground of divorce?—In extreme cases.

19,587. You would leave it to the stipendiary magistrate to say whether the cruelty had reached the point at which divorce should be granted?—If the power was not granted to the stipendiary to grant a divorce, I would give him the power to commit the case to the divorce court.

19,588. Were these cases coupled with irregular relations with other women?—The cases I have given?

19,589. Yes?—The complaints by the wife?

19,590. Yes. They were mostly cruelty and drunkenness?—Yes.

19,591. You would not allow a temporary separation. You would have the separation order granted permanently at the time?—It is a serious question to separate man and wife, and I think it should not be done for a trivial reason.

19,592. Have not you come across cases where parties have become reconciled and lived together happily afterwards?—A large number.

19,593. What would happen if the separation order had been made permanent. They would disregard it?—Exactly. They do now. It does not keep them apart now.

19,594. You do not think the permanence of the separation order would be a bar to a reconciliation?—Not in the least.

19,595. You would do something to prevent imprudent marriages by calling the attention of the parties to what they were undertaking by giving them some leaflet stating the obligations of marriage, and in every case you would require that the marriage ceremony should be performed in a place of worship. I understood you to say marriage in church?—Yes.

19,596. Do you think if children could be legitimate

by the subsequent marriage of their parents that that would conduce to morality?—I think in some cases it would.

19,597. Are you thinking of the general interests of morality, or the advantage to the children, or the hardship on the children of being bastards?—I am thinking of the interests of the children and also in some cases I think it would have a beneficial effect if those who were living together could do so by their legal marriage. There are many living together to-day who have not gone through the form of marriage who might be induced to do so if by doing so they could legitimise the children.

19,598. Those are not persons who had already been married?—No.

19,599. (*Mr. Burt.*) You have had experience as a court missionary. Has that been entirely in the East End of London?—It has been for over 21 years in the East End.

19,600. I think you mentioned at the beginning of your evidence that it had been chiefly in connection with casual labourers? I suppose they predominate in the district in consequence of the docks and the proximity of the docks?—Yes.

19,601. Have you had much to do with the artisans?—Occasionally.

19,602. Would you say that, speaking generally, the remark you made about the lowest standard of sexual morality would apply also to the artisans as well as to the casual labourers?—When you rise in the scale you get better conditions of living; more house room; and I think all these things tell.

19,603. You attribute that largely to the circumstances in which the people are placed?—I do.

19,604. In answer to Sir George White you said that the lack of proper house accommodation is a serious factor in connection with that?—That is so.

19,605. You gave several cases of people who had expressed a wish for divorce, but they knew that it was beyond their means. Were those all women?—All the cases I have given are wives. We have occasionally applications by husbands. Of the applications by husbands 5 per cent. would be with reference to that complaint about their wives.

19,606. With reference to the alleged lack of demand for divorce, you stated in many cases it is well known it is beyond the means of the poor?—Yes.

19,607. And that therefore we hear much less of the demand for that reason?—Yes. They feel that it is futile to ask for it.

19,608. You mentioned drink as one of the causes. You said in some cases; would it not be true it is a factor in many cases?—More frequently in the cases of men. This fault is more on the part of the men than on the part of the women.

19,609. With regard to women, are there many cases of drink being the cause of domestic dissension in the case of wives?—I am afraid I must say yes. In a district like ours there are a good many.

19,610. Can you say in your experience whether drinking is increasing or diminishing among women?—It is rather difficult to form an opinion. I am afraid there is not much to be said either way at present. I think our figures would show it was pretty much the same now as it has been.

19,611. You cannot say anything definite. We have often heard it alleged that drinking among women is greatly on the increase, but you cannot definitely, as the result of your experience, state that is so?—I cannot at the present time say that is so. I cannot say definitely that there is an increase.

19,612. (*The Archbishop of York.*) We have worked so long amongst the East End that I know how valuable your experience is. I think the tendency of your evidence is that among the casual labouring class in the East End sexual relations both before and after marriage are, unfortunately, very loose and free?—Yes, that is so.

19,613. That being so, if the possibility of obtaining divorce on easier and cheaper terms were brought within the knowledge of these people, might it not make it common for them to commit adultery with a

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view to marrying persons for whom they had attractions?—I would not like to see divorce made either easier or cheaper—I mean for those who are able to pay. I think those who have the means ought to pay, but for the poor it is beyond their reach, and it is a law of the realm which is out of their reach at present by reason of their poverty.

19,614. You would still desire to make it a thing that a poor person would not undertake without very great care and forethought?—I would.

19,615. Therefore some degree of expense would be a means of securing that amount of forethought?—At the same time, if the question of expense comes in, many of our people are so absolutely poor that they have not the money to pay for a summons, which costs 2s., and the magistrate grants them free.

19,616. I wanted to get at whether if, in that class where the moral standard is already so low, more frequent divorce, even for adultery, might not lead people and induce people rather lightly to commit adultery in order to be free from a relationship which had become irksome?—With many of them, I am afraid their course is the way of least difficulty, and if there is any difficulty they take the remedy in their hands by living with another person.

19,617. Do you think under these circumstances, supposing such people had divorce, they would always wish to re-marry even the person with whom they had committed adultery?—I think many of them would.

19,618. Many of them would not, also?—Possibly there would be some that would not take the trouble. I believe in almost every case on the part of the woman, she would be willing, where she could.

19,619. In a case where it was known that a man and a woman had been behaving freely with one another, and after some proceedings returned and were made respectable by a marriage after a divorce, would that have a good effect, do you think, on the morals of the neighbourhood?—I am afraid, to take things as they are, it would not affect it very seriously.

19,620. In fact, you feel that the whole moral tone of that class is already so loose that these things would not affect it much one way or the other?—There are so many at the present time living illicitly together, that I do not think, living as they do in that way, they would trouble their conscience with the moral question.

19,621. With regard to cruelty, you distinguish between cruelty as the ground of divorce from drunkenness on the ground that drunkenness, even if it were prolonged and habitual, can be reformed?—Yes.

19,622. Have you never come across cases even of what appear to be great cruelty where afterwards there was reconciliation?—Undoubtedly. I might say I had in my mind cases where a wife has suffered through the misconduct of her husband, and where he still carried on a loose mode of living with other women, and the wife was in fear of getting into trouble again. That is the kind of case I had in mind. There are also extreme cases of brutality, but I think they ought to be very extreme cases to have relief.

19,623. You said in advocating separation orders they should always be made permanent, and that though they were made permanent, they would be no bar to reconciliation?—Not in the least.

19,624. If a divorce were obtained where the separation might have been obtained, that would be a complete bar to any reconciliation?—Yes.

19,625. Would you say there were many cases where a separation order left the door open for reconciliation which would have been closed if a divorce had been made?—If a divorce had been granted and there was a desire to come together again, possibly many of them would not take the trouble to re-marry but would live together.

19,626. With regard to the question of the legitimization of children, born before wedlock you said in your evidence, which we all agreed with, that one of the most frequent causes of unhappy marriages was marriages forced through approaching motherhood and unregulated passion?—That is so.

19,627. If they knew subsequent marriage would make it all right for the children, would not that increase the number of these pre-nuptial connections and unhappy marriages?—It might bring about some cases of that kind. I quite admit it might have that effect in some cases, but I think generally speaking it would be productive of more good than evil.

19,628. With regard to the effect, which I know so well, of the word "bastard" among the poor, might it not be said that resentment of the word was one of the few indications of something like a moral standard among the poor, that they feel it is something wrong?—That exists, undoubtedly. There is that feeling even in cases where they are living illegally and illicitly.

19,629. Would it not be dangerous to remove that shred of moral standard?—There is something so very offensive and repulsive about the word, I should like to see it abolished altogether.

19,630. I was interested in what you said about the effects of magistrates committing cases of drunkenness to retreats. You said you wished the magistrates to have power to commit to a retreat instead of getting a separation order?—That is so.

19,631. In answer to Sir George White, you said you had not been satisfied with the good results where a magistrate had committed?—I had in my mind two different sets of cases: one where the woman had been locked up so many times that the magistrate has had power, in consequence of habitual drunkenness, to commit her without her consent to a reformatory. The other cases were those where the woman consents to enter into a retreat of her own free will. In the latter case the result is very much better than in the former.

19,632. Would you couple the magistrate's commitment of the woman to a retreat with an order on the husband for any payment?—I would.

19,633. In regard to the number of cases where you think that separation orders have led to immorality on the part of the woman, you put it as high as 33 per cent., but have you come across many cases in which the husband alleges the unfaithfulness of the wife as a defence to the payment of his money?—Not many. If the wife has been unfaithful she very rarely asks for payment of the order. Where she does, and the husband is aware of her guilt, he applies to have the order varied by cancellation.

19,634. If they did know that their wives had been unfaithful, they would promptly allege that?—Quite so if pressed for payment of order; but where the wife has been guilty of adultery after the separation has taken place, there would not be so many of those as there are in the case of the men. The percentage of men guilty after separation is higher than that of women.

19,635. I was surprised at your putting the percentage of the women so high?—I had in my mind where it becomes absolute. In those cases the husband gets to know of it, and comes to the court, and there is an application to vary and the order for payment is cancelled.

19,636. If the men knew the wives had committed adultery, that would be a defence available to them for not paying their money?—Yes, certainly.

19,637. And yet you come across very few cases of that being alleged?—We have not many applications by men altogether. The order for payment is not pressed and judgment is allowed to go by default.

19,638. I was interested in what you said, that if separation orders were made at all, they should be made absolute at once?—Yes.

19,639. Do I gather your recommendation is that there should be a long adjournment in each case?—It is frequently done now. I think that is a very wise provision.

19,640. Rather than a temporary order?—I agree.

19,641. You consider that during that adjournment the husband should be required to pay something for his wife?—I should rather prefer that no order was made. I think it gives the missionary more scope to bring them together amicably where no order is made.

19,642. It might be the case that if a frivolous charge was brought by the wife it would be hard to make the husband pay in the interval?—That is so.

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[Continued.]

There is not a week passes that we are not instrumental in having these cases brought together again.

19,643. I know that very well. With regard to what you said about marriages, would you say from your experience of that part of the East End, that marriages in church had exercised a very elevating influence on the people that go to them?—I am afraid I cannot say that it has.

19,644. Another witness, I think, suggested signing some document of marriage contract would be more influential in bringing the seriousness of it home to the people than by saying the customary words in church. Is that what you think?—I do. It passes so quickly, what they hear in church, that it is out of their mind. They are not in the habit of going to church, and they do not know the service, and it is quickly done and passes out of their minds. If they have a document in their possession for three weeks or more, I think it would be a good thing, and I think it would be advisable to extend the time of notice.

19,645. Even in marriages in church, is your suggestion that some such document should be signed?—Certainly.

19,646. In regard to what you said about the police courts as a proper tribunal for matrimonial causes, you had in mind, I suppose, in your answer, the causes that at present arise for separation orders, not the jurisdiction in such a weighty matter as a divorce?—I do not think I should hesitate to give the stipendiary magistrates, but not the justices such as you have in London, that power, limited to those extreme cases, I have suggested, and then power to commit cases, where there was no means of paying, to the Divorce Court.

19,647. You contemplate that even with a stipendiary, he should have power, if satisfied of the genuineness of the case and the poverty of the applicants, to remit the case to a higher court?—I do.

19,648. You do not suggest that he should try the whole case in the police court?—In some cases I do not see why they might not have that power, in those extreme cases I have referred to.

19,649. (*Mrs. Tennant.*) You recommend that a maintenances order should continue to run after the husband's return?—Yes.

19,650. Because the order will then be ready if needed a second time?—Yes.

19,651. Have you thought of any other valuable reason why it should run?—I have in my mind those cases where the wife is persuaded to return so that the order shall become void.

19,652. So that irksome payments should be avoided?—Yes, out of revenge. Ill-treatment follows worse than they suffered before, and the order is at an end, and the wife has no remedy.

19,653. You recommend that wages should be attached in certain circumstances?—I think it would be a wise provision that the magistrate should have the power.

19,654. Was it your intention to leave the power in the discretion of the magistrate not to attach in the first instance, but in the event of a man failing to pay?—I think that would be better, where he failed to pay I think that would be a wise provision.

19,655. So that without having his wages imperilled at first he would have the knowledge that should he fail to pay there would be that danger?—I agree. I think it would have a most wholesome effect.

19,656. (*Lord Guthrie.*) About how many cases a day have you roughly of people consulting you? About 20?—It varies in the years I have been at the court. I am speaking of all cases. I should think I have dealt with 40,000.

19,657. How many individuals among the 40,000—I only want to know roughly—would you say 30,000 individuals?—I should say 40,000 individuals.

19,658. You have people coming more than once?—Yes.

19,659. 40,000 individuals?—40,000 interviews.

19,660. That might be 30,000 individuals?—Yes.

19,661. You said they were mostly women?—Who make the applications to the magistrates.

19,662. Do men consult you much?—Yes, men come as well as women.

19,663. Are they mostly women who consult you?—Yes. Many are referred to us by the magistrates.

19,664. That would apply to police court missionaries generally?—Yes, 90 per cent. of our applications are made by women.

19,665. (*Sir Lewis Diddin.*) On all subjects?—Yes.

19,666. (*Lord Guthrie.*) Including the matrimonial questions. Do the children frequently come, apart from the parents, about domestic difficulties?—No, never about domestic troubles.

19,667. In regard to the payment of the money that you get for the woman, whom do you get it from, the employer or from the man himself?—The man himself.

19,668. Never from the employer?—No.

19,669. Suppose an order was made by a magistrate on the employer to pay to you or the woman, what would be the effect?—I rather think that the man should be left the option to pay the money voluntarily before any order is made to attach the wages.

19,670. What is the risk of such an order?—The possibility of losing the situation.

19,671. Supposing power were limited to cases where the employer expressed his willingness to pay?—In that case I would let the man have the option to pay, but I would let him know that we could do that.

19,672. You have mentioned drink and cruelty. In these cases there are very often several grounds of complaint in the same case, adultery, cruelty, drink?—Occasionally.

19,673. In cruelty cases are they not generally also cases of drink?—Yes.

19,674. Human nature is not so bad that man who is entirely himself is wilfully cruel, even to his wife?—I quite agree.

19,675. Is the result this, that while the disappearance of the excessive use of drink would not solve the problem, it would reduce all the matrimonial problems to very manageable dimensions?—I agree it would. I do not think it would affect the cases of desertion so much as those of cruelty.

19,676. Do not many cases of desertion involve drink as a factor?—A considerable proportion do, but not so many as in cases of cruelty.

19,677. I suppose what you look to to solve these questions is not any amendment of the divorce law, but the raising of the religious and moral tone of the people?—I agree, and the opportunities, if possible, to lead a better life.

19,678. In that particular case you mentioned, the man with 400 convictions and 35 years' sentences, what was the cause?—Drink.

19,679. What was the cause that brought him round? Was it religion or what was it?—The man's last conviction was a month, and he was very ill during that month in prison. He thought he was going to die, and he asked God to spare him to get out of prison. A fellow-prisoner died in the next cell, and feeling ill he thought he would be the next one to be carried out, and he asked God to spare him to get out of prison. The next morning he came to me at the court. I had known the man for years before. I may say that he was left by the magistrate who sat at the court over 20 years as a legacy to his successor, and he was looked upon as hopeless. I had helped him so often I did not know of anything to do for him, but he made the suggestion if I could help him to get a little furniture into a room, a bed, table and a chair, he could get on.

19,680. Was he married or unmarried?—He was then married, but his wife had been living apart in consequence of his violence from drink.

19,681. And he stuck to his resolution ever since?—I got the things and put them into a room, and he has not gone wrong since.

19,682. Supposing divorce were made accessible to the poor for a reasonable payment, such as 10*l.*, would you expect by the willingness and help of relatives and by friends, who might be witnesses, bearing their own expenses, they could obtain it?—I believe they would, but in most cases in the East End you might as well say 1,000*l.*

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[Continued.]

19,683. There is a class above that who are debarred from the remedy who might raise such a sum?—I admit that.

19,684. In the views you have stated with regard to this matter you have had in view not merely the interests of the spouses but the interests of the children?—That is so.

19,685. Primarily, might I say?—Respecting the question of legitimation.

19,686. And also in your views of divorce and separation, have you had primarily in view the interest of the children?—I have thought of that as well.

19,687. Is it your view that whatever remedy may be given should be open to women as well as to men?—I agree.

19,688. In regard to the registrar, when marriages are posted in a registrar's office, are they put outside so that passers-by can see them, or are they placed inside?—Not outside.

19,689. In Scotland they are posted outside. Do you think that would be a good thing?—Of course it makes it more public.

19,690. And makes it known to the parents and others who might have a legitimate interest to intervene?—Exactly, I have known cases where people have gone to the registry and got married and there has been no one except the man and woman. They did not have any witnesses, and the registrar was able to send out and fetch in somebody after a few minutes. The parties who were married had not seen the witnesses before and did not know where they came from.

19,691. On the whole you think that divorce should be more difficult to obtain than separation?—Decidedly.

19,692. You think there are cases where divorce—they may be few—is the only sufficient remedy?—I think so.

19,693. (Sir Lewis Dibdin.) The notice in the registry office is generally put up behind the door of the office?—I am afraid I have no experience. I have never heard of it being made public or put outside.

19,694. I gather you thought, to finish that point, that a religious service was desirable in cases of marriage?—I should prefer it.

19,695. You do not agree with a former witness, who thought that a civil marriage would be regarded as more binding, in a legal sense, on the people than what he called the mystical ceremony of a religious marriage?—I do not think it would. If the suggestion respecting the document was properly drawn up and given to them when they make the application it would deepen their sense of responsibility.

19,696. That would be as applicable to a religious marriage as to a civil marriage?—Yes.

19,697. The form in which you suggest it would be a novelty in both?—Yes.

19,698. You bear in mind that the register is signed by the parties after a church marriage?—Yes.

19,699. That does not come up to the conditions you require?—No, I want something which would point out, before the marriage takes place, the seriousness of the step, and the legal and moral responsibilities attached to it.

19,700. Do you have an opportunity of discussing with these very young people before they marry the things they ought to consider before marriage?—Yes, sometimes.

19,701. Do you find, as a matter of experience, that your efforts are successful in deterring them from entering into these imprudent marriages?—Not often.

19,702. You realise stopping early marriages by an age limit is a very difficult question?—I agree.

19,703. If you did make it illegal that a young man should marry before 21, would that promote or prevent chastity on his part? That is the difficulty that is in my mind, and in the minds of others, that you might stop marriage, but you would not stop the sexual instinct. Would you stop immorality? Would you promote chastity?—I do not think it would prevent it.

19,704. Would it not rather promote immorality? If a man is unable to marry at that early age, will not the same thing go on, either forming an irregular connection or by a prostitute?—In the case of the ages you mention, illegal connections are very rarely formed.

That is, where they live with a man of that sort. There may be casual acts of wrong.

19,705. Do you not think they would very frequently be formed if the parties could not marry by law till later?—In some cases it would have that effect, I think, but in many cases it would have a beneficial effect. I think men would exercise self-control until they became married.

19,706. On the whole, you think the balance would be in favour of restriction?—I think it would.

19,707. The same answer would apply to any proposal to require the man to have a certain amount of property or a certain amount of furniture before he marries?—I think according to his means he ought to have something in the nature of a home to take his wife to.

19,708. You state you would like to abolish the word bastard? I suppose there are a good many words you hear in your part of London you would like to abolish?—That is so.

19,709. Is not there a great difficulty in the proposal of the legitimation of bastards? I will not deal with the question which his Grace has put to you, which is in your mind, but this is proposed in the interest of the children, is it not?—And also, I think, in the interest of some couples who are living together who would be induced to marry.

19,710. For the sake of the legitimation of the children?—Yes.

19,711. Your main ground was the injustice on the children, who have no share in the sin of their parents, in being the whole of their lives branded as illegitimate persons?—I admit that weighs more heavily with me than the other.

19,712. Is not it very unjust that the cure for that should depend entirely upon the disposition of their parents? Take two people who have illegitimate children who will not re-marry, who do not care enough about it, why should their children, who are equally innocent with the others, be left in a worse position than the children of parents who marry for the purpose of legitimising their issue?—I am afraid I cannot suggest a remedy for all the ills one is confronted with.

19,713. Are you not creating another evil in remedying one?—I think it would be more beneficial than harmful.

19,714. I wanted to ask you about your view as to divorce. You have told us very frankly what your evidence is as to your population, which represents, I am afraid, the very humblest class of all?—We are right in the heart of the East End.

19,715. It is not a typical population certainly of the whole of England or the whole of London?—No; I will go further, and say there is no other place or district like it in London. There is nothing like it. We have nothing suburban, we are practically one dead level.

19,716. The result is—because of the conditions under which the people live—you have not to regard the moral effect of widening the powers of divorce, because you have told us it would produce no effect on public opinion, whether divorce was made easier or the marriage tie looser, or not?—I do not think it would.

19,717. That is a sad state of things, but it is not a state of things which is typical of the whole of London?—No.

19,718. But it is in your district?—I am only speaking of that. It has a population roughly of 600,000 people.

19,719. I am trying to bring out the fact and not to controvert anything you have said. Notwithstanding that, I gather from your evidence that in certain extreme cases of cruelty, not necessarily involving sexual vice, and I think in some other cases, you think divorce should be granted?—I said extreme cases.

19,720. I recognise that with great reluctance you say that?—It is so certainly, but I cannot help but feel that there are cases where there ought to be power to grant it.

19,721. Do not answer this question if you would rather not, but have you thought out any principle on which divorce ought to be granted?—I am afraid cannot say I have.

19,722. Do you put it on any religious principle? —That it ought to be granted?

19,723. Whether it ought or ought not, that is the test?—I would not like to see it granted, I do not want to see it cheapened or made easier.

19,724. I know that quite well, but I want your assistance as to whether there is in your mind any principle on which divorce ought to be granted or refused, or whether it is simply that when married life has become really intolerable, divorce ought to be granted. Perhaps that is a principle?—Respecting cruelty, I think, in cases where a woman's life is in danger I would consider it.

19,725. As a reason for breaking the tie?—I think so.

19,726. You do not think you are prevented from taking that view by any religious principle which you hold?—I would consider with those extreme cases the view I hold is that the tie is practically already broken by the conduct of the man or the woman in those extreme cases.

19,727. That is a principle. Do you apply that throughout whenever the tie is broken?—No, because there are cases where the tie might be said to be broken by casual acts of adultery where there is no desire on the part of the wife to sue for a divorce.

19,728. You do not think you are prevented by your religious belief from giving divorce in a case of intolerable wrong on one side or the other?—I do not think so.

19,729. You do think, for instance, our Lord's words make it impossible in a case of cruelty?—I think in those cases that I have in mind, and I have suggested there is no union that God can bless in any way, and I do not think it conceivable that God can have joined these people together.

19,730. I do not wish to press you about it. With regard to reconciliations, you have told us, as other witnesses have, that there are very sad cases where the reconciliation is no reconciliation at all, but the woman is forced back to cohabitation by starvation?—There are cases.

19,731. It would not be right to describe all reconciliations as due to that?—No.

19,732. It would be after all only a comparatively small proportion of them where this is the case?—There is a considerable number where it is owing to pressure that the wife returns.

19,733. Would you say one half?—No, I think I might say possibly one third where they are forced back.

19,734. The other two thirds you regard as real reconciliations where they have made friends?—I think one of the other two thirds has gone back entirely of their own free will in spite of the permanence of the separation order; we have large numbers of cases of that kind.

19,735. If these separations had been divorces, then reconciliations could not have taken place?—I agree.

19,736. That would be in your view a very bad thing?—Quite so.

19,737. We have talked a great deal about separation orders being permanent. Would it not be more accurate to describe them as indefinite? There is no permanence in the sense that they are bound to last for ever?—I agree.

19,738. There is no date fixed for their termination, that is all?—No.

19,739. There is one explanation I want upon your proof. I could not understand your answer to Question 10. You give details of where unlawful connection has preceded the separation order, the emphasis being on "preceded," and you say, "I should say the proportion would be as follows:—Desertion 30 per cent., cruelty 20 per cent., neglect 25 per cent., drink 20 per cent." These are all the causes for which separation orders are granted?—Yes.

19,740. I do not follow the basis of your percentage, because if you add them together you make up 95 per cent. of the cases where separation orders have been granted?—Those are only figures that occurred to me from the experience I have had. I did

not put them down with the object of making up a definite result.

19,741. I do not wish to embarrass you, but I wish to get at the truth. Do you mean 30 of 100 cases of desertion?—Yes, where a husband has deserted I would say about one third.

19,742. And then the same with the cruelty, 20 cases out of 100 cruelty cases?—Yes.

19,743. (Mr. Brierley.) I understand you to suggest that wilful desertion should be made in itself a criminal offence, punishable by imprisonment?—With neglect to maintain.

19,744. In addition to being a ground for making a maintenance order?—Yes.

19,745. At present wilful desertion is a criminal offence under the Vagrancy Act?—Exactly.

19,746. But it is a condition precedent that the wife shall become chargeable?—That is so.

19,747. That a wife is very much averse to doing?—Undoubtedly.

19,748. Do you attach a good deal of importance to that suggestion?—I do, a very great deal.

19,749. I quite agree that there are a great many cases where the wife is unable to find out her husband's whereabouts?—Undoubtedly, a very great number.

19,750. In that case there is no power in the court to do more than grant a summons, and therefore there is no remedy?—Magistrates do not grant summonses when the address of the husband is unknown.

19,751. At any rate, the summons cannot be served whether granted or not. In a great many cases the husband gets off with impunity altogether?—That is so.

19,752. You suggest that the wife should be able to prosecute the husband for desertion as well as ask for a maintenance order?—I agree. In the case of the wife, she has to live and must get work, and she has no time to make search and inquiries. Often it is a provincial town where he has gone to.

19,753. You really think that there ought to be no compulsion on the wife to apply to the guardians before being able to prosecute, and before it is possible for the court to sentence a man for wilful desertion. You want to abolish the necessity of the wife going to the guardians?—Yes; I think if the Commission could carry that out they would earn the gratitude of thousands of poor women all over the country.

19,754. It is in itself a serious offence and deserves punishment?—Yes.

19,755. (Chairman.) The following is the statement you handed to me in the course of your evidence in chief?—Yes.

THAMES POLICE COURT, E.
Orders made.

—	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.	1909.
Desertion	33	36	36	61	40	43	49	41	23	42
Cruelty	18	8	7	7	3	9	7	7	4	8
Neglect	4	5	5	4	4	5	8	3	2	3
Hab.Drunk- eness.	—	—	—	20	8	4	1	5	8	5
Total	55	49	50	92	55	61	65	56	37	58
	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
Highest	21 0	16 0	15 0	40 0	20 0	20 0	25 0	15 0	20 0	25 0
Lowest	4 0	3 0	3 0	5 0	5 0	5 0	3 0	4 0	3 0	3 6
Average	9 4	9 2	7 8	10 3	8 10	7 9	8 11	8 5	10 2	8 6
Children	77	82	90	137	106	142	115	72	39	71
Illegitimate Average : 60 a year at least.										

19,756. Is there any explanation of why orders made on the ground of cruelty were 18 in 1900, and in no other year were over nine. There seems a gradual decline, or rather a sudden decline which continues afterwards?—I am afraid, without inquiry, I am unable to answer that point.

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[Continued.]

19,757. Possibly you can answer the next question, which is on the habitual drunkenness orders. In 1903 there were 20, and after that they dropped to eight and five. I take it that was because the Act only came into force in 1902?—That was so.

19,758. There many were accumulated cases to which that applied?—Yes.

19,759. (Lord Guthrie.) You are employed by the Church of England Temperance Society?—Yes.

19,760. Does that in any way prevent your being applied to by all classes and denominations, Jews, Gentiles, Roman Catholics, and Protestants?—No, I work in harmony with all.

19,761. That applies to all police court missionaries?—Yes.

(Chairman.) I must thank you very much indeed for your very well-considered evidence.

Mrs. PEROLINE MAUD WEBBE called and examined.

19,762. (Chairman.) You have now worked 16 years at rescue and preventive work among women and girls?—Yes.

19,763. You are a married lady, I think?—Yes.

19,764. Is your husband the well-known cricketer?—Yes.

19,765. You particularly work in the wards of the Women's Lock Hospital, and you are a member of the committee?—Yes.

19,766. You are also a member of the ladies' committee of the London Diocesan Rescue and Penitentiary Association, and are on several other committees of the same kind?—Yes.

19,767. We may take it you are very busy with all this work, and have had a great deal of experience?—It is all indirect experience I have had.

19,768. What do you mean?—The question of affiliation orders I have had a great deal of experience about, and the procedure of affiliation orders applies to separation orders.

19,769. You will tell us what is indirect and what is direct experience when we get to the more detailed points. With regard to local courts, you have nothing to say except that so long as you have divorce for the rich, it must be made possible for the poor?—Yes.

19,770. You are not familiar with divorce procedure?—I have no real experience.

19,771. That is a matter for those who know the court. With regard to separation orders, you would make the separation temporary, say for a year, efforts being made by some person of responsibility to effect a reconciliation in the meantime?—That is only my opinion. That is indirect evidence. I think you had better leave that.

19,772. In the event of no reconciliation being made there might be a renewal for another year?—Yes.

19,773. Now, as to affiliation orders, you have direct experience about them?—Yes.

19,774. They do not come directly within our inquiry. Can you confine what you have to say to what will be of assistance on the points we have to consider?—I have nothing more to say than what I have written. I understand, in order to get maintenance in a separation order, the woman has to get her maintenance in the same way as in affiliation cases, and I have given my experience of the difficulty it is for the woman to get that money.

19,775. Taking the difficulty in the one case and the difficulty being similar in the other, you propose some remedy to remove those difficulties?—May I just read what I say. When the woman has proved the paternity of her child, and the father is ordered by the court to pay maintenance, he too often refuses to pay; the same thing happens with a separation order, therefore the money should be collected by an officer of the court, and paid by him to the woman. The man would be more likely to feel his responsibility if he had to pay to an officer of the court, and recognised that behind the order was the power to enforce it. Also, when the woman has to issue a summons or warrant for arrears, it means half-a-day off work to get either, and a whole day off when the case come on. This is often difficult for a woman, and must be doubly so when she has several children to support, so that the court should be responsible in every way for getting the money. I had a case the other day of a girl, and when I said, "You must get this," she said, "If I go I shall lose my place." She was working in a factory, and she said that there were many people to step into her place. You will find that is the opinion of all rescue workers.

19,776. A woman who has a separation order is of the same class?—She is in the same position.

19,777. You would let the work of collecting be done by an officer of the court, who would put the process in motion by which it should be done?—I understand in the Separation Act that there is this, "Provision may contain payment by officer," but it is seldom enforced.

19,778. The only difficulty is if the officer is not paid, who is to bear the expense of putting the process in force?—I feel that it should not be the women and children who should suffer, and as "Provision may" contain payment by officer in the Separation Act, I should like "may" changed to "shall," and that this same officer should be responsible to put in process the motion to enforce payment, instead of it being left to the women to try and enforce payment which she is seldom able to do.

19,779. You suggest that the experience of the rescue workers is that it is bad for the woman always to be coming into contact with the father in affiliation cases, and that it would not conduce to reconciliation in separation cases?—I think it applies the same, only even stronger.

19,780. What you next deal with is a bone of contention, the cruel position of the woman. You have a point on affiliation cases which bears on foreign orders as to soldiers and others on foreign service. Will you tell us what that is?—In cases of affiliation orders. If putative father is a common soldier on foreign service, and has been ordered by court to pay 5s. a week, the most that one can recover for child under Army Act of 1845 is 1s. 3d. a week. The same Army Act applies to a separation order, with a proportionately small allowance for the wife. Why should a soldier not fulfil his responsibilities to his illegitimate child, or wife and child, simply because he happens to be on foreign service.

19,781. Can he practically pay more than the order allowed?—I have been down to the War Office and they tell me that is all you can claim, and for a separation order it is the same small allowance, and about the same proportion.

19,782. Suppose you increase that, would there be an opportunity of getting it?—If a man is on foreign service I understand he has more pay.

19,783. Do you know why that limit has been put in?—No. I know when it is a question of a regiment debt or a public debt that he has to pay in full.

19,784. At any rate, you have drawn our attention to it. The next point we know about, that the warrant should be put in force at once instead of waiting for a month?—Yes. Then there is this difficulty of getting the money. I protest against sending the man to prison if it can be helped, but I should make it possible to recover the money from the man's employer, but of course this would only apply where the man was working for others.

19,785. Does your experience enable you to say whether the employer would not at once resent it and dismiss the man?—I think that would just be different in each individual case. Very often the employer might be willing to help one.

19,786. We have had it suggested that the employer should have the offer to accept notice of the order and act upon it?—I think that would be so. I find people are very kind to one when one is trying to help any one who is in need of help.

19,787. It is to the interest of the children to be kept with the mother and make a home life for them.

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What is the reference you have to what is done in France?—I have just been over the foundling hospitals in Rome and Paris, and in France if a child is legitimate, or illegitimate, the woman can go to the "L'assistance Publique pour les enfants" which is in every department of France, and she is given immediate relief. If one child, she is given 25 to 30 francs a month, and if the child is under seven months no questions are asked. If the child is over seven months she is given relief at once, and if it is found she is deserted, or the children are in need or want, she can at once claim relief.

19,788. Is that whether legitimate or illegitimate?—It does not make any difference. I do not want the same system altogether here, only the same result; the man in France is more privileged with regard to that woman and child, because there is no affiliation.

19,789. Is that done independently of whether the money can be got from the man or not?—Yes.

19,790. Entirely?—Entirely.

19,791. Is there any state of proceeding which the authorities can institute to make the man pay?—It is unlawful in the case of an illegitimate child.

19,792. Even for legitimate children?—It makes no difference, so I understand it. They want to do everything they can to keep the woman and children together.

19,793. It is paid out of the State?—As a rescue worker I only know what it would mean to us if we could have a sum of money to keep the child and mother together. We should save a considerably larger number than we do. It is a most difficult thing separating a woman and child. It is the cruellest thing, because I find these women have the greatest affection for their children.

19,794. You have called our attention to a very valuable suggestion which we may have to inquire into further?—That is my personal experience, that is what my work is.

19,795. The next point is with reference to the publication of reports of divorce cases. Before you deal with this, is this a mere matter of opinion, or is it based on any experience you have as to the effect of publication?—I have no direct evidence, but in the course of the work I do many people talk on these subjects and ask for advice and help, which has led me to this conclusion.

19,796. Will you be good enough to state the conclusion?—In my opinion nothing but names of persons divorced, and offences, should be published; though I think it ought to be possible that the record of such cases should be accessible to persons showing a *bonâ fide* reason for such knowledge. I think it is intolerable that even in the best papers you see (when a celebrated divorce case is going on) details that can do no good to old or young. In the young too often, I think, it stimulates the faculty of imitation. Even if it could be proved that publication was a deterrent, which I do not believe for a moment can be proved (people think after, not before wrongdoing, of the consequences), it could never out-weigh the far larger number that it harms.

19,797. Your conclusion is the result of your experience?—Many people come and talk to me upon these subjects, and ask for advice and help, which has led me to this conclusion; also I am sure publishing details must affect witnesses coming forward. I would like to give an instance that came under my notice. A few months ago during the proceedings of a well known divorce case which lasted a considerable time, I happened to hear things said which showed me the keen interest which was being taken in the case by my household.

19,798. Is that by your servants?—Yes, through my children. It created an atmosphere that caused me to give a sigh of relief when the trial came to an end. I know every bit of it was devoured. I cannot describe the atmosphere it created.

19,799. You also think that the publication of details may affect witnesses coming forward?—That is what I feel by hearing people talk about these things a great deal to me.

19,800. With regard to amending the law relating to divorce and matrimonial causes, what have you to

say?—I find it hard to express strongly enough my feelings with regard to the inequalities of the moral standard between the sexes. What determined me more than anything to do the work I am now doing was when, as a young married woman, I found that a man might have one or more mistresses, and that the innocent wife's only remedy was a separation. On the other hand, if the woman made the proverbial "slip," all rights of motherhood could be taken from her by the husband getting a divorce.

19,801. Would you place the two sexes on an equality as regards all causes of action, including adultery?—Yes, first and foremost I want equality of the sexes with regard to adultery. The first reason being that it would be a deterrent and help to the man. People seem to forget when they talk of the wise wife ignoring her husband's unfaithfulness, that there is another woman in the case. This woman I have had too often to help. Generally when she comes to me she is going to have a baby.

19,802. You have several in your mind?—Yes.

19,803. Will you please go on with your proof?—I have only to say what has been said to me when I have questioned these women that have come to me. More than once I have the answer given, "The husband did not get on with his wife." She did not love him and he has gone for comfort to another woman. One instance has come to my mind where I happened to know both women, the truth being in that case the wife only loved her husband too well, or I would say selfishly, forgiving him time after time, not leaving him till he had reformed, which was the really hard thing for her to do. I have two cases in my mind where I am certain if the wife had had power to divorce her husband for continued misconduct it would have done more than anything else to prevent it. Neither of the men I refer to would have cared to have faced public opinion, as even these men's friends were against them, and pitied the wife. One man was a man who was going to be a member, and I do not think he would have liked the evidence to come out which I know would have come out if she had been able to get a divorce.

19,804. You speak about rights of access to children?—The guilty wife must be allowed equal rights of access to the children as the guilty husband; as a right not as it is now, left to the discretion of the court. I am thinking of a case where the wife got a separation, and the discretion of the court gave the guilty husband power to see the child of the marriage at stated times at a neutral house, so long as a certain person (meaning the woman the husband was living with) was not present. Think, if the case had been reversed, the wife being the guilty party, would this right have been given to her? My experience has shown me again and again that a woman is not necessarily bad because she may find it impossible to live with her husband, and lives with another man, say, for instance, the co-respondent. I claim that as mother, the woman ought to have an equal right to her children, and I know this is the one thing more than any other which will help her live the life we all wish. The equal right of access should be assigned to the guilty wife as a right, because a man may make the wife an allowance subject to the conditions he likes to make, namely, that under no circumstances should she see the children. I will give you a case in point.

19,805. I do not know that you need detail the case. Do you not think that might tend to relax the restriction the woman has to face?—I do not think so. I have thought carefully about it. I would not take it away from the man, because I think it cannot do any harm, and can only do him good.

19,806. You may get cases of hopeless demoralisation of the woman, where it would be disastrous to the child to see her. You claim it as a right without giving the judge a discretion. Let me suggest a case. A woman has become a prostitute and her husband gets a divorce. I am sorry to say there are many of those cases. Do you say she should have the right, or would you leave it to the discretion of the judge?—In exceptional cases I should not give it. I ask that at least the woman should have the same likelihood of seeing

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her children as the man. I have known many prostitutes, and I think if they had been allowed to see their children it would help them to give up the life.

19,807. Is not that looking at it too much from the point of view of the guilty person than the true interest of the child?—I do not see how occasionally seeing the child can hurt. I understand a man gets that right except for very serious immorality.

19,808. Do you think the true question to be solved is what is the best interest of the child?—Yes, I certainly do.

19,809. Another point is about unhappy marriages which are the causes of separation and divorce being needed. You have something to say about that, I think?—As unhappy marriages are the causes of separation and divorce being needed, I should like to say a word about a practice that is too common among well-intentioned people who have no experience of rescue work. It is the practice of making two people marry where the woman has got into trouble and is going to have a baby. When I first began rescue work this was constantly done by workers. Workers are now learning that it is often the most unwise thing to urge, but I am frequently coming across it, for instance, among people in whose house a servant has got into trouble, with the best intentions they think marriage the only solution, and as often servants cannot afford to lose a character they have to submit. My experience being that marriage is seldom wished for by one of the parties; and only leads to infinite misery if it is enforced by any influence one may have. A case happened a short time ago, of a girl of 18 years getting into trouble with a boy of 16. The clergyman of the parish insisted on marriage.

19,810. That does not seem a legislative question, but rather a question of what people think they should suggest or impress upon the parties concerned?—It is one of the causes I have continually come across.

19,811. I do not think you have any legislative suggestion?—I do not think I have.

19,812. Another point is about the parties meeting each other?—I feel, too, that when possible, divorce ought not to be final without the guilty party of either sex being able to ask for the opportunity of seeing each other face to face, by this I mean that at the beginning of proceedings the guilty party could demand to see the plaintiff where this is possible. I know of two cases, one particularly of a guilty wife having been divorced by her husband while he was at the South African war. I felt the force of this when the guilty wife said to me (she having been left in circumstances of danger): "If only I had been able to speak to my husband it would have been different."

19,813. Will you tell us what you wish to convey by that; do you mean before a divorce has taken place or after?—I think before it should be made absolute. I have no technical knowledge, but it often seemed if you could only see a person it would make the whole difference.

19,814. There is nothing which suggests itself to me to prevent parties seeing each other, except after the decree is made absolute?—I have no technical knowledge, but I understand that women could not ask for the opportunity, perhaps it is before the proceedings were brought on.

19,815. While the proceedings are on, and they are at arms' length, there might be a difficulty?—I know it is most difficult. I fully appreciate that.

19,816. The last point in your evidence is with regard to causes of divorce. Are you in favour of an extension of those causes?—I am.

19,817. Will you tell us what the extension would be, and the grounds on which you come to that conclusion?—That is only my indirect evidence. I feel it is no use forcing ideals on the mass of the people.

19,818. Take first the extensions which you suggest, what other grounds than those which exist at present. You deal with it in your last paragraph?—I end my evidence by saying I should like to see divorce given for adultery, aggravated cruelty, desertion, and possibly in some cases for prolonged absence.

19,819. Those causes should be added to what at present exist?—Yes.

19,820. Will you tell me what you think is the ground on which you put that?—I have no real evidence. It is my opinion.

19,821. Has your opinion gone on to the question of insanity?—Yes, I feel with prolonged absence I should like to include insanity when it is permanent.

19,822. May I end up what you are endeavouring to say by suggesting that you mean where the married life has practically become impossible?—Yes.

19,823. (Mr. Brierley.) With regard to what you said about the soldier's payment, is there any difference between the amount a soldier is required to pay when on foreign service and when at home?—I understand that when he is at home you can issue a warrant.

19,824. I am afraid you can only get an order for 3d. a day against a private soldier whether at home or abroad?—I did not know it was as bad as that.

19,825. I do not know what reason they give at the War Office. I do not know what a soldier is required to expend out of his pay, but I suppose it is fixed as all he can afford in order to keep himself efficient?—If it is a public debt he has to pay it in full.

19,826. There is no means of getting it out of him?—It can be stopped out of his pay, I believe, by the Army Council.

19,827. They would not stop more out of his pay. It would take a long time for the debt to be paid off. I rather fancy it is considered what he has left out of one shilling a day beyond what is really necessary for his existence and keeping himself efficient. I believe that is the reason why 3d. has been fixed?—If it is a legitimate child. There was a case the other day that you cannot issue a warrant against a man going on foreign service.

19,828. No, whether on foreign service or not, because His Majesty cannot be deprived of the services of his soldiers. I suppose that is the reason?—You can make a soldier pay if he is not going.

19,829. You can get 3d. a day, because it is deducted from his pay and is sent by the authorities?—Are you sure that for a civil offence he cannot be brought up? I did not understand that.

19,830. Your other suggestions are very valuable, but most of them have been brought before the Commission by one witness or another?—Yes.

19,831. (Mrs. Tennant.) Have you any experience of wives whose husbands are undergoing penal servitude?—No.

19,832. You have not formed an opinion on that?—Yes, I want divorce for prolonged absence, which would cover cases such as these.

19,833. (Mr. Spender.) I suppose you would agree that the people who come into these separation cases are, on the men's side, mostly of slender means, of the poorest kind?—I appreciate that.

19,834. It is a real difficulty to divide a small income between two households when a separation is granted?—Yes, but still I think the woman ought to be more considered than she is.

19,835. The only point I am trying to suggest is that some of this is not the law; it is inherent in the economic circumstances, which are extremely difficult?—Yes.

19,836. You would not say it was part of the Act, or the intention of the Act of Parliament, to separate the woman and child in the case of separation orders. It is not a tendency of the magistrates in administering the Act?—No, it is the fault of the Act, while one owns it grants relief to the women, does not make the law responsible for getting maintenance.

19,837. You find them sympathetic?—Yes.

19,838. You find that true of most magistrates, they desire to administer the Act to keep the woman and child together if possible?—Yes.

19,839. With regard to publication, it is rather a difficult point. You spoke of the deterrent effect which it would have in a home if a wife has the power of bringing her husband into the Divorce Court on the ground of simple adultery?—Yes.

19,840. You instance the case of a man who might be going to be a Member of Parliament. Is not a large part of that due to the fact that if he came to

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the Divorce Court the publicity would attach to it which came from these cases being reported in the papers?—But still I do not feel that would outweigh the other.

19,841. You admit that?—Yes, I should. I think it is full of difficulties.

19,842. You would admit it in a case of that kind.

Mrs. ELIZA LEWIS called and examined.

19,844. (*Chairman.*) You are the wife of George Lewis, and live at 7, Chorlton Terrace, Upper Brook Street, Manchester?—Yes.

19,845. Have you for the last 27 years been attending at the city police courts, Manchester, daily, as missionary on behalf of the Manchester and Salford Women's Christian Temperance Association?—Yes.

19,846. Is that association connected with any particular church?—No, my work is quite unsectarian.

19,847. Has your advice been sought and given to many applicants for separation orders?—A great many.

19,848. You have visited the homes of many, both before and after orders have been granted, and your experience has been chiefly amongst the poorer class of people?—Yes.

19,849. Is it the fact about 900 summonses are taken out each year at those courts?—Yes.

19,850. Many are settled before hearing by the parties coming together?—Yes.

19,851. You state, in your opinion, the orders are too easily obtained. Is that the result of your experience?—Yes.

19,852. In what way do you say they are too easily obtained?—I do not think they regard separation as they ought to. A woman applies to, or since the law has been altered, a woman can get a separation order without thinking of what she is doing.

19,853. The magistrate must be thinking of what she proves?—Yes.

19,854. I want to know what you mean by too easily obtained. I could understand if too easily applied for, but too easily obtained requires intervention of the magistrate?—Perhaps I ought to have said applied for, because they are not easily obtained.

19,855. The magistrates give them adequate hearing?—Yes.

19,856. Do you find in many cases the amount ordered to be paid is not enough for the woman and children to live upon?—Yes.

19,857. Is that based on the amount of money a man can pay?—Not always; a man may be earning, as a rule he can earn, one guinea or 22s. a week, and a separation order is made, and he will allow his wife 5s. a week, when there are three or four children to keep. It is an utter impossibility to keep three or four children on 5s. a week.

19,858. What would be your suggestion in the case of a wage such as you have mentioned?—At least 8s. a week.

19,859. You must leave him enough to be fit for his work and to pay for his rooms?—Yes, but if he is earning 22s., and his wife is allowed 8s., he has 14s. left. It is quite enough for him. The woman has to support her children, and often he does not pay the 5s. a week.

19,860. What do you find as the result in cases where the husband does neglect to pay?—As long as the woman can work she will. A woman will not give way to immorality unless she is really compelled to. That is my experience.

19,861. When you find she cannot get work and cannot get enough what happens?—Then she does do wrong in some cases, even though they ask me, could I get them into the workhouse, before they commit themselves.

19,862. You think husbands are reluctant to support wives living apart, and neglect their children?—Yes.

19,863. Do you think, from your experience, that parties when they are separated tend to be immoral?—I think the man does sooner than the woman.

May I put another point, is not there an aspect of public justice in it as well?—This is making it public.

19,843. You admit there may be a respondent who was charged with adultery in a divorce case, who regards himself as under a serious imputation, and, if innocent, desires to clear himself in public?—I admit that, but I do not think it outweighs the other point.

19,864. Are you able to tell us at all to what extent?—As far as the men are concerned, four out of every 10.

19,865. As regards the women?—One or two, not more.

19,866. Out of 10?—Yes.

19,867. Do you think the granting of separation orders has increased the percentage of those who have gone wrong?—In some instances.

19,868. I daresay you find that after the order is made many do resume life together?—Yes.

19,869. You have found in some cases they apply again?—Yes.

19,870. And separate again?—Yes; I think the wife has been induced to go back to him because she could not support her children.

19,871. Do you think in any cases the wife, knowing of the powers of the court, leaves her husband and expects to get an order for maintenance?—I have found it so in some few cases.

(*Chairman.*) I think that is all in your proof.

19,872. (*Mr. Brierley.*) With regard to the matter of divorce, you have had a long experience amongst the poor. Do you think there are many cases where, if they had the opportunity of obtaining divorce, it would be applied for?—I do not think in the case of women. I know some men whose wives have committed themselves to such an extent it is impossible for them to return.

19,873. Where it is impossible for them to take back their wives?—Yes.

19,874. Do you know any of those cases?—I can recall five in the last two years.

19,875. They really would be cases which were suitable for divorce?—Yes.

19,876. And they are prevented by lack of means?—Yes, they are working men.

19,877. Do you find many cases in Manchester of wives who have been deserted by their husbands for years?—Yes.

19,878. It is not uncommon?—No.

19,879. There again is that, in your opinion, a case where a divorce might be desirable?—It would be helpful.

19,880. It might enable the woman to find a fresh partner?—Yes, I do not know that she would, but if she were divorced, she would have the chance if she wished.

19,881. Sometimes they do find a partner without divorce?—Yes.

19,882. At any rate it would help them to find one, in a respectable manner?—Yes. I am receiving now payments from two husbands to go to their wives, and I know that the wives are not living as they ought, and yet the husbands are away. I wrote to them, and told them what the wives were doing, and they told me they could not afford a divorce, and under the circumstances they were obliged to remit the allowance.

19,883. (*Chairman.*) In those cases a divorce would be an advantage if they had the means?—Yes, it would.

19,884. (*Mr. Brierley.*) You mean there are a good number of those cases, although they cannot be called very numerous in comparison with the number of separation orders?—Yes.

19,885. (*Chairman.*) Have you any other point you think you can usefully put before us?—I should like to say a word or two about marriages. I read in some report that marriages are induced sometimes at the police court. I have never known it at the court I

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[Continued.]

represent. We do not ask for that sort of thing. In fact, where my advice is sought, I rather put it aside; I do not wish for that sort of thing, and they do not.

19,886. Do you think it a bad thing or a good thing that they should be urged to marry?—I do not think they ought to be urged. Then, I think, as far as affiliation orders are concerned, if a man will not marry a girl before she comes to the court and has to go through the shame of it all, I would never urge her to marry him afterwards. If he will allow her to go through all that she is better without him.

19,887. You mention the shame of going through it

in court. Would you advocate all affiliation cases to be taken in private?—Yes, I mean the shame of the whole thing.

19,888. As regards public or private hearing, which would you prefer?—I am only speaking of our own court. We have not so many of these cases; they are not taken as a rule until the whole of the other business is over, and often in another court entirely.

19,889. There is not much publicity?—No, there is not.

(Chairman.) We thank you very much for your evidence.

Miss JEANNETTE MARY TOOKE called and examined.

19,890. (Chairman.) Have you had 12 years visiting the slums of Gateshead and Sheffield?—Yes.

19,891. Including six months of rescue work in the Newcastle district?—Yes.

19,892. What association are you connected with?—In Newcastle I was a diocesan rescue worker; I had to give up because of bad health. I am a voluntary worker in the Church of England. I do not belong to any association, and I am not paid by anybody.

19,893. What is your experience of the result of the law as it now stands?—Do you mean with regard to the Separation Acts?

19,894. Yes?—I consider that they are very ineffective as far as regards public morality. It is difficult for a working man. He must have somebody in his house, and in the North the housing accommodation is such that it is difficult for it to be arranged to keep a respectable housekeeper. He cannot afford to if he is paying maintenance, and in most of the pit cottages there is only one big sleeping room and a small lean-to, and in a great many cases in the flat system there are not two rooms large enough for respectable living.

19,895. Do you think the working of the Act of 1895 as it stands is to lead men and women into immorality?—Very often. If a man is left with children, nearly always—if he has the children at home.

19,896. With regard to keeping a housekeeper, it is the cost and accommodation?—Yes, and it is difficult for a working man to get a respectable housekeeper; it is impossible almost—I have tried to find them, but they are rare.

19,897. That is the man's position?—Yes.

19,898. What do you find with regard to the woman's position?—A woman cannot live on the maintenance money if paid regularly; she generally has to resort to taking lodgers or keeping a small shop, and if she takes lodgers she invariably enters into another connection.

19,899. What conclusion have you come to from that position of things, as to the remedy you would suggest?—One point is that the maintenance money should be paid through the court. Very often the children are sent to fetch it, and that leads to endless trouble. Sometimes the man and woman meet, but she would rather he did not know her whereabouts if he were a violent character.

19,900. Do you think in the cases you have told us of, where immoral relations are the result, a divorce might be an advantage?—Of course the immoral relations would cease.

19,901. They would not occur?—Not in the same way.

19,902. With regard to separation orders, does your experience show that in many cases they come together again?—Very often they do.

19,903. Why is that, do you think?—I have known cases when it has been because the man has terrorised the woman into taking him back.

19,904. Have you found the distress of money payments brings them back?—Yes, that as well. Sometimes the payments are withheld on purpose by the husband. I have known that.

19,905. That forces her to come to him again?—Or sometimes she has nothing but the workhouse to

fall back on, and they dread that. The North country people are very independent on that point.

19,906. In the third section of paragraph 2 you mention some objection to the mode of trial. Will you tell us what the point is?—I have known cases where a woman has been afraid to take the case into court because of the way the neighbours would talk about it and would go to listen. I know one case in Sheffield where the court was divided about the matter, and they all went down wearing different coloured ribbons, according to whether they decided with the man or woman. One would hardly believe it possible, and that kind of thing is dreaded.

19,907. Do you suggest these cases before the magistrate should be taken in private?—Certainly, with no young people present, only the people in the case—relatives.

19,908. You say at the end of the paragraph, as a whole the legal separation is very little, if any, protection?—It is little protection if either the man or woman is against it.

19,909. If they will not carry it out?—Yes, both a bad woman and a bad man will try every way to get round it.

19,910. You next deal with desertion. What have you to say about that?—It seems it is hard when a woman is deserted with young children, the only way to get hold of her husband is to go into the workhouse. They have not the knowledge, or cannot afford to get a summons for desertion.

19,911. How would you apply a remedy there, and if so, what remedy?—I think it should be a punishable offence and that the police should take it in hand.

19,912. You have some cases dealing with the points you have been making?—Yes, I always keep notes of my cases for years.

19,913. Have you stated them sufficiently fully so that I can have your proof with this part copied without asking you to read it through?—I think so. The following are a few cases I had during the last two or three years:—“Mrs. M.—The man never worked “ from three months after marriage, he illtreated her “ while pregnant, and left her when the child was born. “ He came back verminous and drunken and she took “ him back. Before the birth of the second child he “ behaved so badly that the neighbours interfered and “ she got a separation, and went to live with her old “ father. He went to sea, but when he came back “ broke all the windows and so terrified the old man “ that Mrs. M. had to leave. She had to leave two “ other streets because of his drunken rows, and finally “ went to live with him again ‘for peace sake.’ She “ is still working to keep the home together while he “ drinks. Mrs. W.—Husband so illtreated her that her “ leg had to be amputated below the knee. She got a “ separation order, and with the help of friends got “ a small ‘washing’ connection. In two years he “ refused to pay any money and came at night and “ shook the door, sat on the doorstep half the night, “ frightened the children, and pretended penitence till “ she took him back. He was soon as bad as ever “ when friends left off helping. Mrs. I.—Quite a young “ woman (19), was ill because of her husband’s bad life. “ On the doctor’s evidence she got a separation order, “ but was very ill when the baby was born. Her “ husband frightened her into going back to him

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Miss J. M. TOOKE.

[Continued.]

"because he told her she was disgraced in everyone's eyes by the evidence given in the public court, and also because her father refused to keep an invalid; they were only separated four months. *Mrs. H.*—Has five children and young baby. Very respectable; her husband will never send the maintenance money, which the girl of 12 generally fetches, and she tries to live on 5s. and 6s. a week, selling bread and sweets, etc. She tells me she will have to go back to him, but goes in fear of her life, as he attacks her in bed when drunk, and is a bad example to the children. *Mrs. K.*—A pitman's wife, has a daughter by her first husband, aged 13. *Mr. K.* tried to assault this daughter, so she left him, but does not want the case brought into court, so is trying to keep the three children; he has run away and she can get no money from him at all. *Mrs. P.*—Husband is not unkind, but has three times deserted her before a baby's birth. Comes back with no money just as she has saved a little, first, by a small shop, then by cleaning offices, and prevents her living respectably, as he will 'neither work nor want.' *Mr. D.*—Steady, hard-working man, wife drank, pawned clothes and sold furniture; he tried to live away from her but she was always coming back and making a noise, and once took poison in the yard; he could get no housekeeper to stay; this is still going on. *Mr. F.*—Had a wife perpetually drinking with neighbours; he got a separation, but she watched the house, and got the eldest daughter of 15 away on to the streets, sending her back later pregnant. She also twice assaulted his housekeeper; he can get no redress and is afraid of losing his work. *Mr. C.* (Sheffield).—Finding his wife perpetually drunk in the same way as the above, and the children starved, called on the N.S.P.C.C., but the woman continued drinking as soon as she came out of prison. He finally cut her throat, and was imprisoned, as he nearly killed her; now he has also taken to drink."

19,914. You could give, in addition to those instances, many similar ones which seem to show that neither man nor woman have any redress in the case of drunkenness or desertion, or immorality?—Yes.

19,915. Is that because it costs too much for a summons?—It costs too much, and it is curious how ignorant the lower working classes are on these points. They have not the least idea what to do. Unless you have worked among the people you could not realise how little they understand.

19,916. With regard to paragraph 4, I am not sure I follow what you wish to convey by that?—Very often a woman suffers because her husband is leading an immoral life and she has no redress. She cannot stop him. I am thinking of one case where the husband has even brought a woman to the house, so that the older sons who have been supporting their mother have refused to stay in the house and have gone away. She has no redress for that.

19,917. You give two instances of that?—Yes. The sons resent the fact that they are paying to keep a home for their father when he is behaving as he is doing.

19,918. May I take it you would like those two cases put down as part of your evidence?—Yes. *Mrs. H.*—Husband goes away with other women for week ends, and will not give her wages; he is seen with them, and the two sons will not stay at home and bring their wages to keep the home together while this goes on. *Mrs. H.* can do nothing, as he is not cruel. *Mrs. C.*—Has a little money of her own, found her husband was spending his days with another woman and had another family. When she complained, he told her if she said anything he would tell his two daughters, 14 and 16, and bring the other woman to the house. For the girls' sake she agreed to hush the matter up and live on her own money while it lasted, as she could not get a divorce and leave him altogether."

19,919. What do you say would be the result if the law was made more easily applicable in cases of that kind?—Among the lower classes, the lowest class of all, it would make little difference. They seem so absolutely unmoral, if I may use the word; they do not

have any grasp of the moral law. Among the better paid artisan classes, some would avail themselves of it when they have drunken or immoral wives, or when the husband is cruel.

19,920. In the last part of your proof, it has been dealt with by you more or less, you seem to go further, by suggesting that the evidence of these cases should be taken in private?—Yes, that it should not be open to anyone to listen, only those who are really connected with the people, and not any young people under age.

19,921. (*Sir William Anson.*) You mentioned that in cases of legal separation people not unfrequently come together, but the reasons you give do not suggest a reconciliation. Have you known cases in which couples, after a separation order, are reconciled and live happily together again afterwards?—Yes, I know of some, not very many; I think they are the smaller proportion.

19,922. Are you speaking more particularly of Sheffield?—I was thinking more of the people of Gateshead and Newcastle.

19,923. Would greater facilities for divorce be a remedy for those unhappy cases?—I think the only remedy would be less ill-considered marriages, and better housing accommodation.

19,924. And greater severity of the law if after separation one of the couple interferes?—Yes.

19,925. That would be some remedy?—Yes.

19,926. Otherwise you would say better housing accommodation and some restraint upon marriage?—Yes, they enter into marriages sometimes after three weeks acquaintanceship, girls of 17 and 18 years of age.

19,927. Can you make any suggestion as to the nature of those restraints?—I am afraid I am not clever enough to do that.

19,928. In the way of a more serious ceremonial, bringing home the obligations the couple are undertaking?—If they understood it. So many of these people who go to church do not understand a word of the wedding service. We do not realise how few words they apprehend. When you are giving directions about other matters it is difficult to speak simply enough.

19,929. Or in the way of requiring them to show they have means for supporting a family?—That would be a great thing. So many furnish on the hire system, and when they cannot pay and the home is broken up there is trouble, as a rule. If it could be arranged that people did not marry while they were out of work it would be a good thing. During the late distress in the last year I have known several marriages when the man has been out of work, and he has married very often because he hoped the woman would go charring and be able to support him.

19,930. Do you think these restraints on married people would be for the moral benefit of the people?—I think they would.

19,931. They would not result in worse than we have now?—It is difficult to have a lower standard than we have now among the lower classes; I do not think there is much further to go.

19,932. (*Sir George White.*) On the whole, do you consider the separation orders in courts of summary jurisdiction work well? Taking the whole public policy, do you consider it advisable to keep them in their present condition?—I do not think they are much use for the protection of injured parties in the present condition as far as my experience goes; of course it is limited.

19,933. Still you have to look at the alternative, the condition of married life with a great many who apply for separation. Are not they better separated than kept together under those circumstances?—I think in the cases of very young people who have entered into marriage very casually, very often if left together they would shape down and the corners would be rubbed off.

19,934. What do you say with regard to cases of gross brutality?—That is a different matter. I think in cases of gross brutality they should have more than separation.

19,935. In that case you would advocate divorce?—I would.

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19,936. Are there any other grounds for extending divorce which you would advocate besides gross brutality; lunacy for instance?—In gross cruelty you include medical reasons.

19,937. Yes?—Persistent immorality on either side.

19,938. And hopeless lunacy?—No, I should not; that is not the fault of the husband.

19,939. (*Mr. Spender.*) I think you said that desertion was a case which you would have the police take in hand. Will you explain what you mean?—As it stands at present a woman, unless she goes to the workhouse, has no remedy. I know a case at present where a woman worked up a business, and the moment she had anything pulled together the man came back to her, then he, perhaps, stayed three or four months, left her with another child coming, and went away having spent any savings she had. I think it hard a woman being left like that.

19,940. You would make it an offence for the man to come back while the separation order was running?—There was no separation order; he deserted her.

19,941. I was taking it to mean there was an order. Can you invoke the police when the man who had deserted her came back? Do you see any way of making that an offence?—I mean if he had deserted her for any period of time she ought to be able to get the police to help her to get maintenance from him.

19,942. Even if he did not commit an act of overt violence?—If he goes away for long periods.

19,943. She should take out a summons for maintenance anyhow?—I suppose so.

19,944. It is practically the question of cost. You would like some public authority to deal with that?—

Some of these sea-going engineers go off on a long voyage and the woman can do nothing.

19,945. You are aiming at some public authority to which the woman could apply without having to spend the cost of taking out a summons?—Yes. The summons runs out and she cannot afford to renew it.

19,946. In regard to the questions put to you, your evidence does contemplate that in these exceptional cases, these extreme cases which you have put before us, divorce should be had recourse to rather than a separation order as the remedy?—I think so, only in the extreme cases.

19,947. (*Chairman.*) Do you have in your experience many cases of husbands or wives disappearing out of the country altogether?—Yes. I have a good many sea-going engineers, and they will depart. I get that a good deal. I have one case in hand at present where the husband has deserted his wife. He was a sailor, and when he came back he found there was a child, and he said he would not stay in the house with children and she had to go into the workhouse.

19,948. It was his own child?—Yes.

19,949. You are more especially speaking of Gateshead?—That is a case from Gateshead.

19,950. Are you at Gateshead now?—I have been there eight or nine years.

19,951. With regard to cases where the desertion has become more or less permanent by the deserting party going out of the country or being lost in this country, would you advocate a divorce in such cases if the woman or man left behind proposed to apply for it?—If desertion is extended over a long period and they cannot be heard of.

Miss BLANCHE LEPPINGTON called and examined.

19,952. (*Chairman.*) I have a proof of yours which was sent to me sometime ago, but I think you have a longer one which was delivered yesterday. I will endeavour to take you through both and get to the points you wish to discuss. First of all, what is your experience and what is your work?—My work is nothing formal at present. For nine years I was engaged in rescue and preventive work on a modest scale in a provincial town. The work was very modest but it was various. Otherwise I have been connected of late years more or less closely, and in some cases for a great many years, with some of the great organisations for social work, the National Vigilance Association, the National Union of Women Workers, the International Federation for Abolition of State Regulation of Vice, the International Moral and Sanitary Prophylactic Society (Brussels, 1899), and the Eugenics Education Society.

19,953. That seems a large experience. Have you in the course of that been able to come across matters which bear upon what we are enquiring into?—Hardly anything with regard to the kind of evidence you would give in a divorce court.

19,954. In what respect have you come across matters which would be of assistance to us?—Rather as a matter of being constantly led to consider how far the law can aid morality, or how far it does hinder it; the relation in a large sense between law and morality. All the work I have been engaged in has borne on that.

19,955. Can you assist us on the points we have to consider as to how far any amendments of the law would be an advantage?—I have made a number of suggestions in my proof.

19,956. Perhaps I may come to those?—I believe if I may make a suggestion, it would be almost more useful to abandon the shorter proof, because one or two of those points I do not wish to speak upon, and I think the longer proof reads more truly, if I am to give an indication of my real views.

19,957. May I come to the point of your suggestions. I have read the rest which deals with the relationship between law and morality. The suggestions which you make will probably be of the most assistance to us. The first is with regard to facilities for the poor. I

take it that means facilities for meeting any legal grievance?—Yes.

19,958. The original note is, Question 1, "Facilities for the Poor"?—Yes.

19,959. Will you tell us whether that means facilities for the poor with regard to divorce and what those facilities should be?—Yes, it does mean facilities for divorce.

19,960. Will you tell us your views about that as the result of your experience?—When I was first asked to give evidence my view was very strongly that the one point was the cruel inequality between the facilities for the rich and the facilities for the poor. That filled the whole of my mind on the question.

19,961. I do not think that was the form of the question, but I daresay you took it that was the subject you had to consider?—I suppose I did. Later on my view altered very considerably, because facts were brought to my notice which made me realise that there was not that demand on the part of the poor for cheaper and readier divorce that I had supposed there would be, but on the contrary, on the part of the large mass of poor people, the kind of poor people who have a respect for the marriage union, there was a very strong objection and a very great dread of having facilities of divorce brought plainly before the eyes of people generally. I ventured to suggest it was most important to get at the opinion of the poor themselves, not as suggested from classes above them, or religious leaders, but their own natural feeling. Some evidence was given the other day on behalf of the Mothers' Union. It occurred to me that that Union is extremely influential, and places before the women who belong to it a very definite moral idea, and that the views expressed in the petition would really be largely the views of people of another class than the very poor. I had come across lately some women's adult schools. Those are religious but non-denominational associations, and I think their view is rather to get people to think for themselves independently than to press upon them some particular moral idea.

19,962. Having considered this matter both in the light of your experience and from what you have heard, what suggestions have you to make of a definite character with regard to affording facilities for, the

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poor of access to the courts?—The view I finally came to was this, that for the sake of hard cases it might be possible to make divorce cheap for them, and possible for them, without making it easy all round. According to the suggestions made by, I think, very competent witnesses, it might be possible I think to take the preliminary evidence privately before a registrar, and where the case appeared on *prima facie* grounds to be a good case, to afford a grant for sending it up to London; or else, if the county court, or some similar court, was chosen, to let it be a special court sitting on special days with a special judge, with everything separate and exclusive, and as private as possible, so as not to place before the eyes of the lower classes divorce as a thing to be readily obtained.

19,963. You would give them the opportunity, with adequate precautions in the cases in which it was deserved?—Yes, and those only.

19,964. With regard to the duty of the tribunal to affect reconciliation you have a suggestion to make?—That seemed an important suggestion, and I was interested to hear that in foreign countries that is the usual course.

19,965. Would you be in favour of that being adopted?—I should be strongly in favour of it, with this reservation, that there should be a discretion to the judge, because there are cases in which a reconciliation is distinctly undesirable.

19,966. The next question is as to separation orders; have you any experience of the working of those orders?—No personal experience.

19,967. I find your suggestions are drawn from the evidence that has been here before us?—Yes, or thought out from knowledge of the people generally.

19,968. Without going into what the evidence has shown, have you any definite suggestions to make for improvement or amendment with regard to those orders?—I am afraid I do not know exactly what a separation order is. The only difference between a separation order and a divorce is that in the case of divorce the persons can re-marry any one else, and cannot marry each other, whilst in the case of a separation order reconciliation and return to married life is possible. Is not that the only difference?

19,969. You have not the first part right, but the difference is in one case the tie has gone and in the other it has not; they can rejoin without any fresh ceremony?—Then it seems to me all the cases of hardship between married people are met by a separation order, except that you have this difficulty, which applies more to the lower classes, and that is the extreme difficulty of a man getting along without a wife, and the great difficulty in some cases of a woman getting along without her husband; for men left with a family of children the case is often disastrous. A witness gave evidence the other day of what had become of a family of young children left in that way without a mother. A man cannot get a respectable woman to be a mother to the children unless he can marry her. I have a case in point.

19,970. May I take it without going into detail that in those cases where there is a definite separation and no reconciliation, you think they had better be divorced than live immoral lives under separation orders?—I think so.

19,971. I think that sums up the point you have to make on the question of separation?—Yes.

19,972. The third question is the publication of reports. No doubt that is a matter to which you have given considerable consideration?—Yes.

19,973. Will you tell me the views you have come to upon that?—I think the publication of those reports is nothing but an evil, and it should by all means be put an end to.

19,974. Have you come across any instances in which you have found that the reading of such reports has been deleterious?—I cannot give instances.

19,975. It is rather a matter of opinion?—It is a matter of general opinion as to obscene literature generally, and that kind of thing in particular, especially in cases of that kind, where local people are

interested, neighbours and so on. That sort of thing has a special interest, and creates a special curiosity.

19,976. The fourth question is with regard to possible amendments of the law. As the result of your experience are you in favour of an equalisation of the sexes?—Absolutely, on grounds of the simplest justice.

19,977. Do you think any bad results might be anticipated from that which would not be met by the advantage of placing them both on the same footing?—The only bad result that can be imagined would be that there might be more frequent applications by women for divorce. I think, on the other hand, a great many who were sufferers to a slight extent would shrink from going before the court, and there would not be a great increase of cases. On the contrary, as time went on it would tend very strongly to diminish the number of grounds for suits for divorce on the part of the women, that is to say, husbands would actually be more faithful.

19,978. With regard to parental authority, you think that should be exactly equal?—Precisely equal, and whatever advantages are given to the husband as regards seeing the children should be given to the wife.

19,979. In addition to infidelity being a ground for divorce, what are the other grounds, if any, that you are led to advocate?—A witness the other day suggested, and your Lordship regarded it as a very interesting suggestion, quite a new point, that the exploitation of the wife by the husband for immoral purposes should be a sufficient ground for divorce. It seemed to me there was a great deal to be said for that. It is a distinct and direct contravention of the marriage covenant.

19,980. To what extent have you met with that class of case in the work which you have done?—I have not met with that class of case, or hardly ever. I had a conversation with a woman on the streets in a provincial town who had been for some years living with a bath chairman. I asked her why she would not leave him, and she said she was attached to him. I said "Why do not you get him to marry you?" She said "He wants to marry me and I would not marry him; I would not put myself in his power." She meant he would practically have the right to send her on the streets to maintain him, and she would not do it.

19,981. Another ground you mention is insanity, is that a matter which you have formed a view about?—It seems to me a very difficult point, partly because it is a matter of expert opinion, and expert opinion is not always right, whether the insanity is or is not incurable. We had the evidence of a witness that four American States which had had that law had discarded it on the ground of very serious abuses that grew out of it.

19,982. All you say is that it is a difficult question?—Yes.

19,983. With regard to drunkenness, have you come across many cases?—No; I cannot speak from personal knowledge.

19,984. Have you come across many cases of serious cruelty?—No.

19,985. Have you come across cases in which crime is involved?—No, but I should like to say many witnesses have suggested that penal servitude for a long period should be a sufficient ground of divorce. In the paper yesterday there were three cases in which sentences had been quashed, one a sentence for 10 years and one a sentence for 15 years. In one of those cases the man was absolutely innocent; he was condemned upon a mere technicality. It would have greatly added to his hardship if his marriage had been quashed when he was sent to prison, an innocent man.

19,986. Another ground which you mention here which you have considered is desertion. I should like to ask more particularly about the case where the desertion has been prolonged?—That seems to me a question of very great difficulty.

19,987. Have you had any cases of that kind come before you?—No.

19,988. Then it becomes a matter of opinion?—Yes.

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19,989. I think I have gone through the summary, although I have taken it a little shortly; that covers all the points you have mentioned except some points about procedure. One is with regard to reconciliation, and the other with regard to the prevention of perjury. That I am afraid we cannot enter into here?—I thought it was a part of the procedure.

19,990. (*Sir George White.*) You have referred to women adult schools; have you had intimate connection with the working of them?—Not intimate connection with it. I came across the people because I was asked to speak to them on moral education. Some of the women spoke themselves, and I was struck with their earnestness, intelligence and independence of thought. I wrote to the ladies who managed the adult schools at York asking the general opinion of those women. There are four adult schools there, and I have here what they said. One of the schools has 40 members, one has 27, another has 30, and another 32. In the case of the school with 32 members all the women gave their opinion. I do not know whether you would care to hear the letters?

19,991. Is it their opinion on the question of divorce?—Generally, yes, whether it was to be desired that it should be made easier for those of their class. All the opinions are very strongly against divorce being made easier, very strongly indeed, quite surprisingly so.

19,992. Had they any definite notion of the meaning of the term applied, of divorce being made easy. We should all be against that, but the worth of the answer would depend upon how it was put them?—Many of them were against such a thing at all. One said "The church says till death us do part." Another quoted "What God hath joined together let no man put asunder." Another spoke of the dreadful practice of securing divorce just because a man wants to marry someone else: "If they cannot live happily together, they should live apart without marrying," they were horrified at the idea of getting a divorce just so as to get another partner. They were strongly against making divorce any easier, because they all thought it wrong; but one woman said she thought it ought to be alike for the rich and the poor, that is, she would like the facilities taken from the rich. Another thought the interest of the children was one very strong reason against it. This was the greatly preponderating opinion in a class of 32, in which nearly all spoke.

19,993. (*Chairman.*) What is the class?—Adult schools, a sort of Sunday school for women.

19,994. What age are they?—Those I saw were all ages, from elderly women down to young ones. These are all the respectable poor. They are not those who would have an interest in not wishing divorce to be easy, because they are not the sort of loose women who might say "My husband can get a divorce against me and I would rather he would not."

19,995. (*Sir George White.*) That is characteristic of the other letters?—Yes.

19,996. From what you saw of these women they are rather a class above the population represented to us by many of the police court missionaries?—Above the population that I should call below the divorce line, the people who care nothing at all about morality.

19,997. Do you know anything of the men's adult schools of the same character?—I am sorry I do not. One lady said "I wish you had given us time to get the evidence from the men's schools."

19,998. Would you be surprised to learn the men take an opposite view?—I should be interested to learn it.

19,999. (*Sir William Anson.*) These are expressions of opinion. There is nothing there about separation orders?—No.

20,000. (*Mrs. Tennant.*) You say there are cases in which you think reconciliation undesirable. What class of case is in your mind?—The class of case, where a woman is tied to a very dissolute man, and where perhaps already the children she has are defective or diseased through his misconduct, and where separation or divorce is her only chance practically of not having more children to come under the same ban. I think for the sake of the children, and looking at it from the point of view of the race generally, and the

undesirability of adding to the numbers of the mentally and morally and physically defective, there are cases in which a permanent separation between husband and wife is very desirable. That was the class of case I had in mind.

20,001. By permanent separation do you mean divorce?—It would depend on what the wife herself thinks right. Some women do not think divorce right and do not wish to be able to marry again. In some cases it may be really a hardship not being able to marry again. That it seems to me should rest with the aggrieved wife.

20,002. In the letter you have just read which you say is typical of others from the same source, do you think that woman has herself been in touch with the hardships of other women?—I have another letter from a woman who certainly has, a working woman of great intelligence and extremely high moral character, who has been trying in the South of England to form an adult school, and she introduced me to the women who belong to it. I wrote to her and asked her to give any help she could, and she writes a rather incoherent letter, but she feels both sides strongly. She is quite the kind of woman to whom a woman would go and tell the intimate troubles of her life. She feels both sides.

20,003. You mean she is reluctant to increase divorce, but on the other hand she sees hardships to individuals?—Precisely.

20,004. The letter you have just read you feel is from a woman who does not come closely in touch with them?—It gives just the views of poor women who have lived among their own class. I cannot go into detail because I do not know the persons individually. I only saw them in a group just when I was speaking.

20,005. (*Mr. Brierley.*) I am not sure whether you have answered the question. Is the adult school denominational?—No, undenominational.

20,006. Is it carried on in connection with any place of worship?—I believe that the idea of an adult school originated with the Quakers, and many of them are carried on largely by those who belong to the Friends' Association, but I was told distinctly that all these schools have all sorts of people, Church people and Nonconformists.

20,007. I suppose the teachers are as a rule connected with some place of worship?—No, I do not know that they are.

20,008. I suppose there is a prevailing opinion at present, whether well founded or not I cannot say, that divorce is forbidden by Scripture?—Yes.

20,009. I did not know whether those would be the kind of lessons that had been instilled into the persons who attended this adult school?—The reason I asked for the opinions of the women in the adult school was because I thought that we should get the natural opinion of that class from a secular point of view, quite apart from any influence, or any attempt at getting them to express one thing or another.

20,010. How did the opinions come to be expressed; was there any discussion on the subject?—I wrote just before Sunday or Monday, when the schools are held, and they raised the question in the school.

20,011. One would like to know what sort of lead, if I may use the expression, was given to those persons who attend the school. It is rather easy to get an expression of opinion when a very forceable character has discussed it?—To the best of my belief no lead was given. In writing I felt sure they would not give any lead and that is why I wrote. The object was to get the unled opinion of the schools.

20,012. (*Chairman.*) Would you object to our reading the incoherent letter?—No; shall I read it?

20,013. I will read it to see whether it is coherent or sufficiently coherent to be read?—Might I say that I would suggest that the name should not be published. This woman might not like to see her name in print, and I know she has been reading the accounts of the Commission.

20,014. I have read it through and I should hardly characterise it as incoherent. Should I be correct in summarising it by saying she would be in favour of divorce in proper cases?—I imagine what I suggested

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would about meet her view, that hard cases should be met by being helped to go through as divorce cases. She would admit that, but she feels she would not like it made conspicuously easy for others.

20,015. May I ask who suggested your evidence should be taken by the Commission?—Lady Frances Balfour told me she believed it was Mrs. Fawcett.

20,016. (*Lady Frances Balfour.*) I do not know?—I wrote to the Secretary several times and said I had

nothing of the nature of evidence to give, but in writing I put a few of these points before him, and he repeatedly told me that he thought the Commissioners would like to have my evidence. I must apologise if really it is quite worthless, but I did my best not to come.

(*Chairman.*) I am not suggesting that. I only wanted to know. We thank you very much for your evidence.

Miss ELINOR JANET MORTON called and examined.

20,017. (*Chairman.*) Have you been for seven years a church worker and police court missionary in Woolwich?—Yes, I was till last year.

20,018. Does that work come under the Church Temperance Association?—The police court missionary part does. I gave about one-third of the time to that and the rest of the time I was working in the parish.

20,019. The first point you deal with is separation and divorce amongst the working class people. You have taken them together?—The practical knowledge I have is as to separations.

20,020. Is it from that practical knowledge of separations you draw conclusions about divorce?—Just so.

20,021. You state people who are poor cannot afford divorce under the existing law?—Yes.

20,022. Have you found there are cases in which they would have desired it if they could have got it?—Yes, and they have asked me if it were possible to get a divorce, and when they have heard about the fees, they have said, "What can be done?" and I have had to suggest to them a separation.

20,023. The expense stands in the way?—Yes.

20,024. Should you think from your experience amongst these people that if divorce were allowed it would or would not conduce to morality?—I think it would conduce to morality largely.

20,025. Will you give the explanation of how you come to that conclusion?—At present the fact that people are separated permanently, but not divorced, is conducive of immorality; I mean they form other connections.

20,026. You have found that in practice?—Yes, often.

20,027. You say that continency is not unknown among working women; many single men and widows live respectably, but the economic position of a separated wife makes it difficult for her?—Yes.

20,028. Will you explain the operation of that?—If the woman is a widow she could go to the guardians for assistance or to charity. Of course, if she is a single woman she has no children to keep, as a rule. If she is a deserted wife she has the same claim as if a widow. If she is a separated wife the guardians will not assist her, unless she goes into the workhouse, and allows them to summon the man for maintenance.

20,029. She has to go into the workhouse before they can put pressure on him?—Yes. No respectable woman will do that for the sake of the children.

20,030. You would recommend that she should be able to get relief without having to go to the workhouse beforehand?—Yes. If separations are to go on as they are some arrangement of that sort should be made.

20,031. Do you find the result of the difficulty is that the woman at times succumbs to temptation?—I think they do. I know one woman who told me she had done it for the sake of the child; she could not keep the child in any other way.

20,032. Do you find it also leads to drink?—I do not think a separated woman would be led to drink because of poverty, she would not have money to drink with.

20,033. She looks out for someone else to keep her?—If she cannot get work and maintenance.

20,034. Turning to the men now, what is the position you have found with regard to them?—I think working men practically never live alone without a home, unless they are quite prepared to do wrong when they have the chance. I mean they practically never live continent, the majority of them.

20,035. If separated they take someone else?—Yes.

20,036. Even someone else with children?—Yes.

20,037. Do you think in those cases they would marry if they had a chance?—I have known several cases where they have said they would be glad to marry; of course, sometimes they would not.

20,038. I suppose you know that, practically, the working man or woman cannot apply to the magistrates except on the ground of immorality?—Yes; as a matter of fact, where immorality comes in, they do not apply. If a man knows his wife is immoral he leaves her if he wishes to at once, and if he has a separation order with maintenance, and knows his wife has done some illicit action, he drops the maintenance. He does not trouble to vary the order. He knows his wife cannot get anything, and he drops it.

20,039. He knows the wife cannot get free?—He knows she cannot claim maintenance, and he drops it. He does not take the case to court again.

20,040. Do you think that the moral sense of the people is weakened by this position? You have a note of that in your proof?—Yes, I think it is the fact that they are separated, and that a woman knows her husband can do wrong and she cannot. I know instances where it has been her downfall. Besides, I think it is very bad for the man. There is often a man who will say that he does not approve of divorce facilities, but at the same time he has given his wife quite sufficient cause to apply for divorce against himself.

20,041. How do you think the orders work out in other respects?—I do not think they are at all satisfactory.

20,042. Will you give us your reasons?—Chiefly because they put the woman in such an impossible position. The man's wages are low, and even if you leave the man sufficient to support himself in lodgings, there is not sufficient to keep a wife and family. Often a woman has to leave her children and she is homeless, there is no furniture, and so on. If he is told to divide the furniture, he cannot, there is not enough to divide.

20,043. Have you any suggestions of any alteration in the law, merely on the separation point?—I should never make a permanent separation.

20,044. You would make it temporary?—Yes, and with permission to add to the time, if necessary, and to bring it up under review.

20,045. Do you find people in the class you are dealing with marry improvidently and recklessly?—Of course, there are two classes one is dealing with. A very low and degraded class you get in the police court, and outside the police court, who have very low ideas about marriage and morality. Then there is a respectable working class, the poor labouring class, who very often desire relief. I am not sure which class you mean.

20,046. I mean both?—The improvident people in the degraded class would not take the trouble to marry; they would live together as long as they wished, and then go. In the other class there are improvident marriages, and they turn out disastrously.

20,047. Have you had experience of the cases that come under the Habitual Drunkards Act?—A good many.

20,048. How do you find that works?—When a woman is separated because she is a habitual drunkard I think it is the last chance for her; she goes downhill fast.

20,049. Do you suggest she should be sent to a home compulsorily?—I do not think compulsion is any use; the compulsory cases never recover. If they

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[Continued.]

will agree to go voluntarily a great deal of good is done, but many a man separated for some time will come back to his wife after she has been in a retreat. There is a case at present where a woman is in a retreat; they have been separated a long time; they are elderly people, and the man has promised to take her back.

20,050. The next point is separation on the ground of disease; are those sexual diseases?—Yes.

20,051. What is the point you make there?—I think the last witness said that should be a ground for divorce, and yet the difficulty of divorce is that such people would be ready to marry again.

20,052. You summarise your points on page 3; will you kindly read those and see if they cover what you wish to put before us?—"Justice demands equal freedom for all, whether men or women, whether rich or poor, whatever freedom may be granted. That is with regard to separation and divorce. A good deal of our religious and social sentiment in the past in this matter of a different standard and laws for men and women has been directly conducive to a low morality. Possibly an increase in the grounds on which divorce were allowed might mean an increase in moral standard, or at least less deliberate lowering of the moral tone through irregular unions. But those grounds should be few, and strictly applied—immorality—certain cases of cruelty where separation had failed—certain cases of desertion or separation which had lasted for years. The time before a decree can be made absolute should be greatly extended."

20,053. You wind up by saying more ought to be done in the direction of instructing people about the marriage laws; there is great ignorance?—Yes, amazing ignorance.

20,054. You suggest proceedings should be taken to bring home to the parties their responsibility before they are allowed to marry?—I think so. I think a great deal might be done by having legal marriage apart from religious marriage.

20,055. Legal marriage followed by the other ceremony if they like?—Yes, they can go on if they please, but that everybody must be married by a civil court if it could be made simple and dignified.

20,056. The next points are additional. You prefer these cases of separation to be heard by special local courts rather than police courts?—Yes.

20,057. Can you tell us why you think so?—Because I think at the present time the police court hearing absolutely fails to get at the truth very often. The respectable women who come up are much upset obviously by coming within the precincts of the police court to begin with, and the formal legal evidence upsets them. They begin to tell their story and are stopped, and they get so muddled and confused by the formality they cannot go forward and say what they wish to.

20,058. That would suggest they should have some legal assistance provided?—I think it would, but I do not think legal assistance would be necessary in a private or semi-private court. There was also some suggestion that the exact laws of evidence should not be observed.

20,059. You also do not like to have these cases heard before a lot of people?—No, I think it is very bad, bad for the witnesses, bad for the parties, and bad for the public.

20,060. Have you attended the hearing of these cases?—Yes.

20,061. Have you a stipendiary magistrate at Woolwich?—Yes, the two courts are worked together, Greenwich and Woolwich.

20,062. You think that would be a better tribunal than lay magistrates?—I have no experience of them. Private courts absolutely separate from the police courts are, I think, really of great importance for all these cases; I think they would get at the truth.

20,063. On the lines of the Children's Courts?—Yes.

20,064. Has the metropolitan magistrate jurisdiction at Woolwich?—Yes.

20,065. You would like those cases to be heard separately?—Absolutely separately, in a separate place if possible, but separately.

(Chairman.) I think that covers practically all that your proof deals with.

20,066. (Mr. Brierley.) Would not the hearing in private be sufficient to satisfy the objection at which you are aiming?—Not quite; you would be bringing them into the police court.

20,067. It is rather a serious matter for the very few cases which occur in some parts of the country that a separate place has to be provided for a hearing?—There is now such a place to be provided for a Children's Court.

20,068. It is very often in the same building?—The same place used for the Children's Court might be used for the matrimonial cases. You might give it a different name on those days.

20,069. That is your idea, that there should be some special place set apart for the hearing of those cases, and the hearing should be in private?—Yes.

20,070. As to what you said about cases of habitual drunkenness, I do not know what you suggest. At present the Act of Parliament gives power to send to the inebriate home with the consent of the wife. That you agree with?—That practically means to send to a three years home.

20,071. The Licensing Act, 1902, which enables a separation order to be granted to a husband for the habitual drunkenness of his wife, enables the wife to be sent with her own consent to an inebriate home. That is what you approve of?—Yes.

20,072. You think it is no use making that power compulsory?—There may be cases, but I have very seldom found any reformation after compulsory sending.

20,073. You think the desire of the woman to reform must co-operate with the order to make it have any chance of success. That is the experience you have had?—Yes.

20,074. Have you had any cases where even, the going to an inebriate home by her own consent has resulted in the cure of a woman?—Yes, you cannot really tell unless you watch the woman for the rest of her life.

20,075. You have to watch for some years?—I have seen cases where they have gone on steadily for a long time.

20,076. We had a witness yesterday who said out of 60 cases, 39 had turned out satisfactorily, which is nearly 75 per cent. That would be in accordance with your experience?—I do not think I can give figures.

20,077. It sounded a very large number?—I should think if you get a witness from a voluntary retreat you would find the numbers good.

20,078. You suggest there should be a civil marriage in every case before any religious ceremony takes place?—Yes.

20,079. On what ground do you advocate that?—Partly to get rid of the present difficulties between the civil and religious sides of marriage; partly that, and partly people would be more inclined to remember it is a civil contract, that it is not only a matter between themselves but that the State has a voice.

20,080. Do you think it would cause them to realise better their legal obligations?—I think it would if made sufficiently formal, not like the present registry marriages.

20,081. One of the witnesses this morning suggested a document of instructions should be drawn up?—Yes.

20,082. Or something of that kind?—I think they want instruction. Also something more formal than a registry and more public.

20,083. (Mrs. Tennant.) It has been questioned whether the separated wife would be really appreciably the better off if entitled to divorce, because the fact she usually has children would be an obstacle to her remarriage. Do you agree with that point of view?—I do not think so. I find women with a large number of children get married quite easily.

20,084. That has come definitely within your experience?—Yes.

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[Continued.]

20,085. Do you think that the wife would generally be anxious—I am speaking now of really grave cases which are not met by separation—to take advantage of the opportunity for divorce in the case where there is a man ready to marry her?—Yes, I can give you a case quite easily, a woman I knew well for years. Her husband was particularly cruel and drank, and they were perpetually in the court. He was locked up for being drunk and assaulting her, and she got a separation more than once. It was impossible to get him out of the house. He disregarded the separations and came back—he was a strong man. She stood out a long time, she said if she got a divorce he would respect it. She had no money. In the end she lived with another man so that the man would keep him out. I have known other cases, but that is about the worst I have known.

20,086. Suppose such a wife also had regard for any future children of the second union she would like to make those children legitimate?—Yes.

20,087. Do you find a strong feeling about that?—Among the respectable people there is a very strong feeling about that. I think amongst others there is very little. I think the tendency to-day is to think less of the legitimacy of the children. They say it is not the children's fault. People say that and make very little difference. I think the women themselves would much prefer to have legitimate children.

20,088. Do you find also a feeling among them of regard for their marriage lines?—Very much so. Very often I think that when living in those irregular unions they take to drink to drown the sense of doing wrong.

20,089. (*Sir William Anson.*) The remedies you suggest for the state of things are, first, an increase in the grounds of divorce; secondly, you put the man and woman on the same footing?—Yes.

20,090. In certain cases of cruelty?—Where separation fails. I should be inclined in practically every case to try separation first.

20,091. And then if the husband persistently molested the wife?—Or if there was a desire and was evidently going to be a permanent separation, if they had no intention of going back together again they might require the relief.

20,092. Without any further cause except that they remain separate?—Yes.

20,093. You would take the cruelty which was a ground of separation to be a ground of divorce?—Yes.

20,094. If no reconciliation took place?—Yes, you might have a case where after six months when the case came up for review the woman might say "I am afraid to go back, I know I shall be knocked about."

20,095. Then you would allow the judge, the county court judge or the High Court judge, to grant a divorce?—They ought to have the option of the divorce.

20,096. In certain cases of desertion?—I mean long-continued desertion or desertion with aggravation. A man may say deliberately, I am going to leave you and never coming back.

20,097. Desertion where there was no prospect of his returning you would make a ground of divorce?—Yes.

20,098. Lunacy or drunkenness?—Drunkenness in some cases would come under the head of cruelty and adultery. I think that would practically cover it.

20,099. If cruelty was a ground of divorce after six months' separation, would not that rather put a difficulty in the way of granting separation orders, if it ripened into a divorce at the end of six months?—I would make it a ground of divorce after an interval. I would bring up the cases for review every six or 12 months, and if there was no reconciliation or prospect of reconciliation after sometime I should allow either party to sue for a divorce.

20,100. About the special court, whoever dealt with any of these cases, separation orders, affiliation orders, or divorce, what court would you have to deal with them?—A separate court.

20,101. Either at a separate time or in a separate building?—Yes, privately.

20,102. Do you mean that there should be no report of the cases?—No report except the names perhaps, but no reporters present.

20,103. Then in the cases where a married couple were separated, and the woman took in a lodger and lived with him as his wife, and the man obtained a divorce, is it desirable that those two, the lodger and the divorced woman, should marry?—I think so. At present they are allowed to marry, I believe.

20,104. Do you think that conduces to the interests of morality?—I think it would in this way.

20,105. That two guilty parties should marry?—If they knew there was a possibility of marriage they would wait till they were married before living together, in many cases. It is the impossibility of marriage that causes the immorality.

20,106. They would wait till the separation had ripened into divorce and then marry?—Yes, probably.

20,107. And then live respectably?—Yes.

20,108. (*Chairman.*) There is one question Sir William Anson put I do not think you gave an answer to, and that is, with regard to insanity. Have you formed any views about that?—I have no practical experience of that.

20,109. You do not want to go into it?—No, I do not know enough about it.

20,110. Do you know how your name was suggested to the Commissioners?—I think through Mrs. Tennant.

20,111. (*Mrs. Tennant.*) There is one question I want to ask you arising out of your answer to Sir William Anson's question, in which you said you would give the opportunity of divorce after revision. Would you include cases of false reconciliation which had been forced on an unwilling wife?—I think that ought to be considered. Those cases are very few. In those cases you need the help of a probation officer.

20,112. There might be, the appearance of reconciliation without the fact?—Yes.

20,113. (*Chairman.*) There is one question which is not in your proof which bears on this question of private courts. Are you in favour of freedom of publication in the newspapers of the details in these cases?—I would have no details published.

20,114. Have you found any instances in which the reading of these matters has led to bad results?—I think I have. I have heard it discussed very largely among working girls, and I know a local paper where they refused to publish details and could not make the paper pay.

(*Chairman.*) I have to thank you very much for your evidence, I am sure that it will be of great service to us.

Miss ELIZABETH LIDGETT called and examined.

20,115. (*Chairman.*) You were elected to the St. Pancras Board of Guardians in 1881?—Yes.

20,116. Have you been with the exception of two years a guardian ever since?—Yes.

20,117. Have you, during the time been a member of the Workhouse Visiting Committee which deals with separated husbands and wives, and, deserted children?—Yes.

20,118. Do you find that the number of these cases diminishes or increases as time goes on?—My own impression was that they went on just the same as

formerly, but that impression was corrected considerably yesterday in a talk with the master and matron, who are constantly at work, and who have these people under their eyes more closely than I have myself, and they thought the number was decreasing.

• 20,119. Do you find that these people show much sense of duty in any respect?—No.

20,120. You have a case which illustrates that point?—Yes. It is a case some years old, a husband and wife and children who came into the workhouse because the husband seemed to be hopelessly out of

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[Continued.]

work, and the guardians considered that it was a great disaster to keep that family interminably, and they gave the wife a chance of going out and forming a home and gathering the family together, but instead of making a home for her husband, she found another man to work for her. I came upon her working in a very low district in the neighbourhood, and found she was that woman under another name, and she had got a little family under another name. She complained very bitterly to me that the guardians had prevented her children, who were maintained by the rates, from visiting her, and she said it was an outrage, she was a respectable woman. I told her the reason was that they were the children of her husband and herself, and they were protected because she had set up a home in this way. But she stoutly defended it. She said he was no husband for her, and the one that worked for her she respected. Whatever the guardians did the children made friends with their mother, and they are all out in the world now, I believe.

20,121. You find the usual story is that drink or immoral conduct is the cause of separation?—Yes.

20,122. And the cruelty of the husband, and neglect to maintain?—Yes.

20,123. You say the accused person retaliating with a story equally bad of the wife?—Yes.

20,124. Is a special relieving officer appointed by your board to look after these matters?—Yes, he goes into court. These cases are always referred to him, and he is constantly at work on them whether referred to him by the board or not.

20,125. Is he sent by the magistrates when a case comes up to look into it?—He is always in attendance on the work of the guardians, and the guardians send him to the court. I think I may have to modify this statement about the number of orders.

20,126. Do you find that these troublesome cases get reconciled from time to time?—That is the effort of that officer to reconcile them, to prevent separation orders being necessary.

20,127. Have you found whether immorality results from the orders for separation?—I must acknowledge myself I have not followed up many of these people, but I asked this officer, and he spoke gravely about it, and said it was a serious matter, the amount of immorality that followed. I also asked our superintendent relieving officer, a man of great experience, first in Poplar, and then in St. Pancras, and he said the same thing.

20,128. The number of orders at Clerkenwell you want to correct?—Yes, these were given to me by the officer who attends the court. They seemed to be more than I should expect, and on reading an official report of the board about this part of the work, the figures were different, less than I should expect, and I should like before my evidence is complete to ask for his explanation of the difference between those sets of figures.

20,129. I do not think we need trouble about that. We may take it that there is a number of orders in the district?—Yes.

20,130. Do you find that the orders are not always made when the summonses are applied for?—No, many of the wives withdraw their applications.

20,131. What is your general view without going through the details of it as to the making of these orders?—That there is a very great deal of immorality. May I be allowed to go aside to another point for a moment?

20,132. I was leaving your proof and taking your general view as to the result of your experience of the working of these separation orders?—My impression is that it has reduced the amount of cruelty of husbands to wives. I do not hear so much of these murderous attacks on wives as I did years ago.

20,133. In that respect it has been beneficial?—I think it has.

20,134. How do you think it has affected questions of morality?—I cannot say that it has mended them. I should like to say I have had considerable experience apart from my work as a guardian in one of the very poorest courts of London among the most casual labouring people, trying to work it upon the lines of Miss

Octavia Hill. Reference has been made this morning to overcrowding as the cause of this immorality. I should like to agree with that, and say in these tenement houses the too promiscuous occupation of the houses has a very great deal, I think more to do with it than anything. A poor labouring couple, harmless people, take one floor with their children, and there are people of quite a bad class on the next floor, and they are all mixed up together, and when there is a street or court of that sort of people mixed up, those that are decent are at a disadvantage. They keep themselves quiet, but it is impossible to bring up children decently. Our labour was to weed out the other people, and it had a marked effect in the course of years, and made a very distinct rise in the morality of the people. It was done at a very great cost, but I think that is at the back of a very great deal of the immorality of the poorest people.

20,135. That is part of the housing problem?—Yes. The public authorities cannot afford to build for them, and the other landlords must make their money.

20,136. If they were improved you look forward to a state of general improvement?—Yes. I was speaking yesterday with the master and matron of the workhouse, who are careful observers, and I said this must be at the back of the continual production of such people.

20,137. What sort of people?—These lawless, immoral people with no sense of duty. They agreed that it was the contamination of the promiscuous occupation of tenement houses.

20,138. Generally have you come to any conclusion as to whether the divorce law requires any amendment to meet any of the difficulties you have met?—My mind has been considerably affected once or twice in listening to these cases. I remember a man particularly who was quite a good character, and whose wife was something despairing. He had to be told that he had no remedy whatever. He had children, and had to put up with his wife, who was a disgrace. Here and there there are people of that sort, and if a man is like that he must find someone to take care of his children. If he is allowed to enter into a legal marriage he may get a respectable woman of some sort to be his wife. If he is not allowed he will find somebody. Supposing he had to wait for a year or so before he is allowed to marry a respectable wife, his relations, his mother or sisters or some one, will take care of the children for a short time, but they will not take care of them for ever; it would be possible for him to set up a home. In the other case there is no home life for himself and the children as long as his wife lives.

20,139. That would lead one to see in proper cases that the real remedy is divorce?—I think so. I asked those officers I referred to before. One attends the police court, and he said he thought there were cases, although he took a very serious view of it, in which a better life would be lived if a man were granted a full divorce. I say a man because I think a man is more helpless in such a case.

20,140. You are dealing with a man, because in the class of life you are considering he must have someone at home?—He must have someone, and it is an absolute certainty he will not live a good home life and keep a home fit for children to be in unless he can marry.

20,141. Will you take the woman's side and deal with that. If she gets a husband who is worthless and cruel, probably of a deserting type, I should like to know what your views are?—If she can maintain her children I think a woman is more able to carry on. She can make a home. As a matter of justice I think she is as much entitled to form a new home as the husband is, and I think it would be putting very great temptation in the way of such women if they saw that the men could have that right and the women could not.

20,142. Have you considered whether the present causes for divorce are satisfactory, or whether they should be extended?—To penal servitude, do you mean?

20,143. I would rather put something more. Cases of gross cruelty, cases of prolonged desertion, cases of habitual drunkenness. Will you take those three first?

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[Continued.]

—I think very great cruelty, certainly, and long desertion. Drunkenness and cruelty are so mixed. Yes, I think I should in certain cases, but as other witnesses have said, I should not make it easy by any means.

20,144. Those are the cases in which the broad points you put make life practically impossible?—Yes, and there is very little or no hope whatever of improvement.

20,145. There are two others: Crime and lunacy. Have you formed any views with regard to those?—There is a great deal of immorality, it seems to me, from the people we see, among those where the husband or wife is in an asylum for a considerable time.

20,146. To what extent have you come across cases of that kind?—They are these people who come before the Workhouse Committee. I have not kept a record of statistics.

20,147. You have met them?—Yes.

20,148. What is the general nature of that case?—They set up a home with someone else while a husband or wife is away in an asylum.

20,149. You have met with the same class of thing happening where there has been long imprisonment?—Yes.

20,150. Would you advocate those two latter cases as being grounds for final dissolution if the remaining party chose?—I think I should, but on the other hand, with insanity cases are pronounced hopeless that are not hopeless—they sometimes recover—I think that would be a very complicated and difficult question.

20,151. On the question of the publication of reports of cases, have you anything to say? Have you met with instances in which you think it has produced a bad effect or otherwise?—I have a very strong view about it, but I have not met particular instances in which I could mark the effect. All bad reading has its effects.

20,152. You are adverse to the publication of reports?—Very much so.

(Chairman.) I thank you very much for coming and giving us your evidence.

Adjourned.

Winchester House, St. James's Square, London, S.W.

THIRTIETH DAY.

Monday, 20th June 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace the LORD ARCHBISHOP OF YORK.
The Right Hon. the EARL OF DERBY, G.C.V.O.,
C.B.
The LADY FRANCES BALFOUR.
The Hon. LORD GUTHRIE.
Sir WILLIAM R. ANSON, Bart., M.P.

Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour Judge TINDAL ATKINSON.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

The Rev. JOHN EDWIN WATTS-DITCHFIELD called and examined.

20,153. (*Chairman*.) I believe you are the vicar of St. James-the-Less, Bethnal Green?—Yes.

20,154. Who suggested your name as a witness before the Commission?—The Archbishop of York.

20,155. I daresay in that district you have had a large knowledge of the working classes?—Yes. I should prefer to speak not so much as a clergyman, but as one working among the working classes for many years, I have had unusual opportunities of knowing them. I have the largest settlement for working men in East London in connection with the Church, and my experience is not only of East London but of the great cities of the North. I want to speak from the point of view of a social reformer rather than as a clergyman.

20,156. Which districts in the North are you familiar with?—Manchester and the Pottery district, and Carlisle; but my work has been in East London recently.

20,157. How long have you been at St. James?—13 years.

20,158. What is the population of your parish?—12,000. I have taken an interest in the whole borough. I am chairman of the Board of Guardians, and I have been on the Board for some years.

20,159. To what extent has this question of divorce come before you?—Almost every social problem has come before me. Having daily intercourse with large bodies of working men almost everything that touches their life comes before me and this among the rest. I

draw a distinction between the working classes properly so called and the submerged tenth. There is a difference between the two. With regard to the submerged tenth I do not think the question touches them in any way. It is rather a question for drastic legislation and moral and spiritual influences to be brought to bear. I may give an illustration that touches the submerged tenth. The Board of Guardians have power to adopt children, even with regard to chargeability. My guardians have adopted 62 children during the last six years. One case came the other day showing the submerged tenth will not be affected by legislation on the divorce laws. There is a man whose father and grandfather are in the workhouse. Five years ago the guardians adopted one child; he set off on tramp; each year he has had a child, making four since the first was adopted. The guardians have adopted two. He wanders about the country and comes back when his wife is confined. I do not think the divorce law would touch a case like that.

20,160. You suggested social improvement and drastic legislation?—Yes.

20,161. Social improvement is outside our inquiry, but drastic legislation is not?—It is a farce to adopt a child and leave the parents to go on as they like afterwards. In a case of this kind the law ought to step in and ensure that the parents are detained, in great compounds if you like, and set to work. They are a pest to society and breed children that become pests.

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The Rev. J. E. WATTS-DITCHFIELD.

[Continued.]

20,162. It is quite right to call attention to that?—I am not going to speak on that side so much, but on the real working-class side.

20,163. What have you to say about that?—Among the working classes there is a very high regard for marriage. You see it in a thousand ways. The last thing a woman will pawn will be her ring, and it is the first thing she will redeem, and her marriage lines are her greatest possession. Among the working classes living together unmarried is looked down upon. The fact that when a girl gets pregnant before marriage, she, and to a large extent the young fellow, wants to be married shows that there is a regard for the marriage tie. I feel that the working classes do as a whole look upon marriage very seriously, and, considering their environment, the marriage tie is extremely well observed.

20,164. Do you mean that there are cases where divorce would be desirable?—There are cases that arise, like everything else, where adultery has taken place. The whole thing wants carefully watching. I think cheap marriages are bad.

20,165. Will you explain what you mean by a cheap marriage and how it is bad?—Some years ago there was one church in Bethnal Green, St. James-the-Great, where the vicar lowered the fees to a ridiculous figure, and it became the rendezvous for marriages for miles around. The general opinion among the clergy and the people in the borough was that it was a bad move. Young girls thought they had only to save a shilling and get married. It lowered the whole tone of marriage in that district for some years. As far as inquiry for divorce is concerned I have scarcely had one in the whole of my experience. It is not because I am a clergyman, because many talk to me about that and on other things.

20,166. Do you think they know it is too expensive for them to get it?—They know it is too expensive to get it, but, on the other hand, I do not think there is any desire for it. Among the working classes, if there is a tiff or disagreement, for the moment they speak most vehemently and the person who does not understand them may be led astray. I have heard a woman declare in the morning "I will never live with him again" and the same night they are happy again. In the morning if she had been asked by the magistrate "Would you like a divorce?" she would have said "Yes."

20,167. She would have to prove a case. To what extent do separation orders and applications of that kind come before you?—I feel rather strongly with regard to separation orders.

20,168. I will come to that presently because it is dealt with in your proof. To what extent does the separation order question come before you?—I have had a large number, not merely as vicar and being known among the working classes, but also in my connection with the Board of Guardians.

20,169. What would your view be as to giving a lower court power to deal with divorce?—I am strongly against that for certain reasons. To bring the court into the midst of the people would create a demand where it does not exist at present.

20,170. Would there be any objection to that?—I think so. It would lower the whole status of the marriage tie, and collusion would be easier among the working classes than among the upper classes, and therefore I do not think either the county court or the police court is the best place. Among the working classes the county court is associated with the hire of furniture and rent, and the police court is associated with drunks.

20,171. What do you say to the High Court if placed within their reach by some system of poor man's advice and help?—If there is to be divorce it must be reserved to the High Courts. My experience has been somewhat large of the police courts and it leads me to this opinion, that there is such a diversity of opinion amongst stipendiary magistrates. I cannot mention names but there is a police court in London I have had to do with where there are two magistrates, A and Z: A is as perfectly strict as possible, if anything too strict, and it is most difficult to get a separation order. Z grants them almost for nothing. Over and

over again when I have a case where I thought a separation order was desirable I have taken care the woman went when Z was sitting and she has got the order. If I thought separation was undesirable I sent the woman down when A was sitting and I knew she would not get the order. Consequently she has had a lecture, gone home happy and lived happily. If you grant a divorce to that court what would happen? One magistrate would make it difficult to get it and the other would be most lax.

20,172. Your suggestion would be if there are cases which require it they should be dealt with by being investigated first and sent up to the High Court for decision?—Yes, if facilities are to be granted to the poor.

20,173. Are you against divorce altogether on any ground?—I cannot say I am against divorce altogether; I say further on in my proof it should be granted simply for adultery.

20,174. Is that on scriptural grounds?—And also on social grounds.

20,175. Do you find with separation orders men and women frequently come together again?—Yes, to a large extent.

20,176. You say that the orders are too numerous and too easily granted?—Yes, people come together very largely. The Justices' Clerks' Association stated the number as 51 per cent., but I should say it is larger than that. If you made divorce easier there would be a serious problem connected with that. At present people come together and if they have children they are born in wedlock. But if you make divorce easy I think a large number would come together —

20,177. It depends on what you mean by easier?—If you had divorce cases large numbers of those who are divorced would come together again among the working classes but they would not be re-married: consequently you would have children not born in wedlock: if they are divorced and come together again the children born then would be illegitimate.

20,178. You say the man is frequently dealt with too leniently?—Yes, I should like to emphasize that very strongly indeed. It is an important matter. I will give you three cases. One is a cabinet-maker earning 28s. a week regularly. His wife applied for a separation order; she had one child: it was granted and the man was ordered to pay 3s. a week. That left him 25s. a week. The moment his wife had got the separation order he went to live with another woman; he had 25s. and the wife with the child had only 3s.

20,179. Was she earning money elsewhere?—No; she had to commence to take in work; in fact she applied to the Board of Guardians. Another case was a man earning 30s. a week regularly and his wife applied for a separation order. There were three children. The magistrate made an order for 10s. a week, leaving 20s. for the man. That woman with three children could not keep herself respectable, and she went and joined herself to another man to get more money. In another case a man was earning 3l. 10s. a week; his wife applied for a separation order, and she had three children. The magistrate made an order for 1l. a week, leaving him with 2l. 10s. I think these cases almost drive women into immorality and orders are given too loosely. Some magistrates, before they grant a separation order insist on a previous conviction being made. I have heard separation orders granted for reasons and on evidence which, if you carry it to its logical conclusion, would give separation orders to thousands of people in the East End.

20,180. Are you speaking of Stipendiary Magistrates?—Yes. Then the mode of payment to women leads to immorality. Some men are vicious, and when an order is made against them I have known a man send a postal order to a woman and make it payable 20 miles away.

20,181. You suggest payment should be made to the court?—I think that ought to be so, not only with regard to this but with regard to bastardy as well. That is a frequent cause of immorality.

20,182. The next point is with regard to drink, which you think is the most frequent trouble?—Yes, to a large extent. The law with regard to inebriate

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homes has almost failed, and more drastic legislation wants to be passed with regard to that.

20,183. In what direction?—You want to take the wife away or the husband away, and deal with them in a different way. I do not think the homes as at present conducted are satisfactory.

20,184. Can you make a suggestion as to how it should be dealt with?—It is rather difficult to go into that question at the moment.

20,185. It comes in directly. Supposing the magistrate were to have power, beyond making an order for separation and payment, to do something more, one wants to see what he could do?—Magistrates ought to have greater power to send persons to inebriate homes.

20,186. Compulsorily?—Yes, much more than they have at present.

20,187. That is the real suggestion?—Yes.

20,188. I am taking you through your proof. It is convenient to follow that. You deal with the question of publishing reports of divorce cases?—Yes, I feel that the publication is decidedly bad in its effect on the working classes; it is not simply the Sunday papers that are guilty of this, but also, far more than people imagine it, the local papers published in a little district or a country district which have a poor circulation. Their advertisement fees do not amount to much, and if they get hold of a bad case the circulation goes up. I have known, in local cases of a bad character, four editions of the paper have been sold in that district on the same day. It is the local papers more than the Sunday papers.

20,189. Have you met with any instances you could give of an absolutely deteriorating effect produced on individual readers?—Yes, I have come across that very frequently indeed. Men have told me over and over again how, to a large extent, their first intention or turn towards a vicious life was through details in the newspapers—not an isolated case, but large numbers.

20,190. Are you speaking of details of divorce cases?—Yes, and also other cases of criminal assault. They have a most disastrous influence. I have talked it over with persons who have worked among girls, and the same thing applies more or less to girls. Now girls can read, and these papers are taken in. It seems worse among the working classes than among the upper classes, because among the upper classes you have books of all kinds to read, but the paper lies on the table, and is the only thing which has not been read which is in the house. Every boy and girl can take up this paper and read it.

20,191. I daresay you would have noticed, if you had read the reports of this Commission, that once or twice Bills have been introduced with a view to check this kind of publication, but have not succeeded. The earliest I remember is Lord Campbell's Bill. That was long before the Education Act, and before poor people were able to read?—Yes.

20,192. And long before this great circulation of cheap literature?—Yes.

20,193. Those matters would make this evil, if it is an evil as you suggest, one a great deal more felt than 50 years ago?—I agree; the Education Acts, and the circulation of papers of the cheap kind, have materially altered the situation.

20,194. You have no hesitation in recommending the total prohibition of these divorce cases being published?—Quite so. In addition to that, I have talked it over not merely with people of the East End, but also of the West End. I do not think publication is a deterrent, because, after all, if a person is divorced their own immediate circle know it without the newspapers, and the immediate circle of the person concerned is the circle the person minds the most. He does not care about Tom, Dick, or Harry. People know it without the newspapers.

20,195. Would you assent to the view suggested, of publishing the names and the decision?—Yes, and go so far as the judge's summing up, if necessary.

20,196. I meant to include that?—Yes. It is the evidence I object to most strongly.

20,197. With regard to amendments of the law of divorce, you suggest men and women should be placed on the same footing?—Yes.

20,198. What is your reason for that?—From my experience among the working classes, not only among men, but women—I have a women's gathering of 1,500 women—I should say, from a woman's point of view, it is a mistake to imagine that the woman does not feel acutely the immorality of her husband. It is a very delicate question to speak about, but it is often lost sight of that the danger to a woman of contracting disease through the infidelity of her husband is far more than the danger of the man through the infidelity of the wife. If a woman goes wrong she usually goes wrong with one particular man; if a man goes wrong he goes wrong, perhaps, with a dozen women. A large number of cases have come under my notice of disease contracted by women in this kind of way.

20,199. I gather what has been called in this room "accidental adultery" may have worse consequences than persistent adultery?—That is so. If I looked through my diary I could give scores of cases of that kind. When I speak to the ordinary workmen—reasonable and sensible workmen—about it, they cannot understand why cruelty is coupled with adultery.

20,200. Would your view be that, making away with the necessity for coupling cruelty with adultery, would improve matters or not?—I think it would.

20,201. Will you explain why?—It would raise the status. I have known many men who, when I have talked to them—I have seen them on behalf of the wife—have told me how they have simply abstained from cruelty because they knew, as they had committed adultery, proceedings would be taken. They felt as long as they did not commit cruelty they could go on being immoral.

20,202. If they could now be sued for, simply, immorality it would tend to put a deterrent in the way, because they could be made responsible for it alone?—That is the point.

20,203. You proceed in paragraph 7 to confine the grounds of divorce to those at present existing, that is adultery?—Yes.

20,204. Do you think, permitting it for any other cause would be detrimental?—Yes.

20,205. Have you had cases of men or women deserting and going off to another country?—Yes.

20,206. And the desertion lasting for a long period?—Yes.

20,207. How would you deal with those?—Those are cases that are extremely sad, but in the interests of the community at large you want to have, especially with the working classes, some clear and defined issue. A man will understand what it is to be divorced for adultery, but if you include insanity and persons in prison, and people going to other countries, and so on, you will obscure the view of the great mass of the working class, and they will think you can get a divorce for a multitude of different things. The object of the law ought to be that it should have a very clear and defined issue, something defined that a man can grasp. If I commit adultery I have a chance of being divorced.

20,208. Scotland takes the view that desertion is a very clear issue, and they have taken that view for three centuries. Is it not a clear issue if a man or woman says, "I am off to America, and am never coming back again"? Would you leave the partner tied?—Are you sure he is never coming back again?

20,209. After several years?—I have known many men who have gone to America and have come back again.

20,210. I was trying to put a case—I do not wish to put something that is not before us—where the court is satisfied a man has maliciously gone and never intends to come back again?—I should say it is a hard case, but marriage is bound up with the social welfare of the country.

20,211. How do you think the welfare of the community would be affected by a case of that kind being dealt with by the partner left behind being free?—I think anything other than adultery being made the cause would lower the standard of marriage. The home is the foundation of the State.

20,212. It is easy to say it, but I want the reason for it?—Because among the working classes generally

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there is a fairly high estimate of marriage. I do not want anything to lower that. From conversations I have had with hundreds of working men, bringing in any other cause than adultery would confuse the issue.

20,213. Supposing you had no other issues than adultery and desertion prolonged for five years?—I should not agree with that. If divorce becomes more common among the poor there is a serious question as to the provision to be made for the children. Now, among the wealthier classes, when divorce is got some provision can be made for the children born in wedlock, but if you had a large number of working-class people who might apply for divorce, and if divorce is made easier or cheaper, who is to provide for the children? Here is a workman with 20s. a week: the law says he can marry again, and then there is another family of five children. Who is to look after the children by the previous wife?

20,214. How, in those cases where the husband has gone to America and is not here, are the children looked after?—By the State to a very large extent.

20,215. That would be the same if the parties were absolutely free?—Yes. I do not see how, if you allow divorce for a man because he has left the country for five years, you are going to refuse facilities for divorce for a number of other things. If you give away the principle of divorce for desertion you would have to give it for insanity and a number of other things.

20,216. What is your general view about orders for permanent separation?—I am strongly against them.

20,217. Why?—Because I have had such experience of men and women coming together again, and if there is a loophole for a man to come together with his wife it ought to be left. If the magistrate makes an order for permanent separation it militates against that. The ideal would be that a separation order ought to be for a year, or two years.

20,218. Suppose the state of things remained which necessitated that order at the end of the year?—I should have it repeated. I should make it annual or bi-annual, if you like. I should be against permanent separations strongly.

20,219. Do you think when they are permanently separated there is a tendency to immorality elsewhere?—Yes; a man would look upon it as divorce. He would say, "There is no chance, however I behave: the law says I am to be separated for life from my wife." The wife would feel it the same way, and it would increase immorality.

20,220. Would it not be better to sever the tie entirely?—No, not in the interests of the community.

20,221. The next point is the question of guilty parties being re-married if there is a divorce against them. What are your views about that?—It is bad for the community that the moment a decree absolute is passed a man can marry.

20,222. I am speaking only of marrying the guilty person?—I mean the guilty person. In a law-abiding country a husband or wife is placed at a greater disability than in a barbarous country. Where there is no law a man can shoot the man who has wronged him, but here he is not allowed to shoot, and the State will not shoot for him. It is decidedly bad. The State ought to set a high ideal with regard to this matter, and if it takes a high ideal it will encourage high ideals among the people; but if the State takes a loose idea it will lower the ideal of most of the people. Take murder. The State takes a serious view of murder. If the State took a less serious view murders would be far more prevalent. The same thing holds good with regard to marriage. The fact that the State severs a man who has been guilty of a crime against a certain woman and child, and says, "You are free to go and join yourself to some other woman immediately," I think is bad for the community, and is a bad object-lesson to most of the people.

20,223. "Some other woman" is general. You do not mean to say that the guilty party should never be allowed to marry anybody?—I do not think he ought to be allowed to marry. Women ought to be protected

from a man who has proved to be unfaithful to one he has taken.

20,224. He should not be allowed to re-marry anybody?—For a certain number of years. I would place him on a black list for some years.

20,225. And never be allowed to marry the other guilty party?—Yes.

20,226. The argument used in favour of allowing the re-marriage of guilty parties has been that it is the only chance to a guilty woman of any restoration. How do you deal with that?—I have not got figures before me, and what I say would be guess-work, but from a number of cases I have known—not among the working classes but among the middle classes and the upper classes—I have found where a man has been divorced and has married the guilty party, in the large number of cases he has proved unfaithful to her a second time. If a man has proved unfaithful to the first wife, the chances are that he will prove unfaithful to the second. Experience proves that.

20,227. If you prohibited re-marriage between guilty people, would you give the Court power to make the man provide for the person he has seduced?—I should.

20,228. Something more extended than affiliation?—Yes.

20,229. For herself and the child, if there was one?—Yes, most decidedly.

20,230. That would be not only an assistance but a deterrent?—Yes.

20,231. You refer to punishment. Are you in favour of criminal punishment for a guilty party?—I should not go so far as to say there should be punishment for an ordinary case, but there should be punishment provided for extraordinary cases, and the magistrate should have power to inflict punishment.

20,232. Of what character do you mean?—At present, in certain pregnant cases, a husband can get damages against a co-respondent for 3,000l. or 5,000l., but that only touches the money side. With a man with a banking account of half a million it does not touch him in the slightest degree. I think the law ought to be able to say no amount of money will make up for the injury you have inflicted on this person, and we shall send you to prison for six months. The law sends people to prison for other things which are of less importance to the community at large.

20,233. With regard to your objection to the extension of the grounds of divorce, are you against any extension beyond adultery on scriptural grounds?—On scriptural grounds. But looking at it from a social reformer's point of view I am equally against it. I have arrived at the same conclusion by two routes, scriptural and social, and they both lead to the same point.

20,234. (*Sir William Anson.*) You find it difficult to distinguish desertion, for however long a period, from confirmed insanity?—Yes.

20,235. And long terms of imprisonment?—Yes.

20,236. In neither of those cases do you think it desirable that divorce should be granted?—That is so. In insanity you may have confirmed insanity, and the chances are the man will not be sane; the doctor says it is incurable. On the other hand, a man deserts his wife for three years, and lives 20 or 25 years—he may come back again. It would be worse to grant it for desertion than insanity.

20,237. As regards the working of separation orders, have you found many cases of reconciliation?—A very large number.

20,238. Where the separation order is temporary?—Yes.

20,239. Where the separation order has been made permanent, have you any experience of what happens?—In some cases they come together by mutual consent, but the fact it has been made permanent has a tendency to prevent that. I have gone to men who have been permanently separated and said, "Cannot you make it up with the wife? She is willing?" In conversation with that man I find, over and over again, he takes the view—he has got a funny idea of the law—that the law has said "I have to be separated."

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20,240. He thinks they are all forbidden to reconcile?—Yes, and that he will be breaking the law to go to her.

20,241. That loosens the desire on the part of a man to abstain from immorality?—Yes.

20,242. (*The Earl of Derby.*) Before one of your remarks you said "If there is to be divorce at all." Does that mean you are opposed to divorce under any circumstances?—No. Both Scripture and common sense will permit it for adultery.

20,243. You spoke of two cases, one a carpenter, where he had to pay his wife 3s. and as soon as he paid 3s. he went off to live with another woman, and another case where a woman got 10s. and she lived with another man. You spoke previously about cases in which separation had been lightly given by one magistrate and harshly by another. Were those cases where a separation was absolutely necessary?—In one case it was, in the other it was not.

20,244. Take the case of a woman where it was absolutely necessary and she goes to live with another man. Do you think it conduces to public morality that she should not be able to divorce her husband before that?—Yes.

20,245. If he was an offender, to divorce him and marry another man?—I think it is because the neighbourhood in which that woman lived would feel she was doing something radically wrong.

20,246. Do not they feel she was rather driven into it?—The working classes as a whole view this more seriously than people in other walks of life do.

20,247. In the case you mentioned you said the woman was forced to live with another man because of the amount of money allowed by the court?—When I used the word "forced," I mean, here is a woman with three children. What is she to do? She is granted, in one case, 10s. to keep them. What is she to do? She has these children, and a man comes along and makes a proposal to her to come under his protection. She does not care for him, she does not really love him, she would not choose him as her husband, but she cohabits with him for the sake of getting extra money for the children. She does not want to marry him. If you freed that woman and said, "You can marry," I do not think she would. In some cases they would. Lots of women sacrifice themselves for the sake of their children.

20,248. You said many cases of separation are temporary and the parties come together again?—Yes.

20,249. Have you any means of judging how many of those perforce come together because of the smallness of the wage making it impossible to keep up two establishments?—I do not think on the man's side he comes back from economical reasons, because if they weighed with him he would bolt and not be found when the time came for him to pay whatever it was, 5s. or 10s. If it was a question of money, he would bolt and be lost; so that I do not think the economic reason comes in with regard to the man coming back to the woman.

20,250. We have had evidence the other way—that when a husband had to pay the money to the wife, when he had to pay he treated her with such brutality that rather than go on she went back to him. Does that come into your experience?—No; I do not think there are many cases of that kind—not very many.

20,251. You have told us you would not allow divorce for penal servitude?—Yes.

20,252. Suppose a man gets a long term of penal servitude, how is the wife going to live?—I have three cases now I know personally. In one case the husband is in an asylum, in another case he has got 20 years, and in the other he has been bed-ridden for 10 years from paralysis. If you are going to grant divorce for those two, why not for the third? The woman has not only to keep herself, but her bed-ridden husband, and work hard to do it. In the other case the woman is relieved of the incubus of working for the husband. She is in a better position, and yet you would grant it to the two who are relieved of their husbands and leave the bed-ridden paralytic man on the hands of the other woman to keep—and yet they do it.

20,253. Between the bed-ridden husband and the man with twenty years' penal servitude you would admit there is a difference; one is his own fault, and the other is not?—Yes, it may be that it is his own fault, but I have one case at present where a man got ten years. During those ten years it was the one hope the man had, of being restored to his wife, and she worked like a brick to have a home ready when he came out. If that man in prison had not the thought of regaining his home life with his one child when he came out of prison he would have gone wrong, it would be bad in many cases.

20,254. The third case is insanity. You do not think a woman should have the right to get separation even for insanity?—She has got it.

20,255. While he is shut up; but when he comes out?—When he comes out he is supposed to be sane. They do not usually allow them out otherwise.

20,256. Insanity is very hereditary. A man is shut up for a time, say a year; he comes out, and a child is born, and he goes back. Do you think, if a woman, she should have the power of being separated? Is it right there should be the chance of that insanity being perpetuated?—I am not sufficiently conversant with the medical question to say whether that child would have a reasonable chance of being sane, but I should agree a woman should have a right, when a man comes out from an asylum, of being separated from him for a couple of years.

20,257. That is what I meant?—For two or three years, whatever might be fixed. I should not object to that. That is a different thing from divorce.

20,258. You would allow separation?—Yes, on health grounds.

20,259. With regard to guilty persons marrying, you would never allow them to re-marry. Supposing a man divorced his wife on the ground of adultery with another man, what chance has that woman got afterwards unless she does marry?—She has got the same chance any other person who breaks the law has got. It acts all round. I have a man in my parish who embezzled money and got three months imprisonment. Nobody will take him on. He has no chance, but he has broken the law and has to be punished. This woman has broken the law and inflicted grievous wrong on her children and husband; they will have a stain upon them. Why should you regard that woman differently from the man who embezzles? One is punished, and the other is punished.

20,260. You would not prevent a man taking on a man who had embezzled?—No, but the question of punishment comes in.

20,261. You cannot find somebody who will take on a man who has embezzled; but supposing somebody would, would you prohibit it?—No; I was drawing the line with regard to punishment.

20,262. Why prohibit the woman from being taken on as a wife again?—In any question of that kind you have to take into consideration the influence on the community, and the marriage of a guilty party is decidedly bad for the morals of the country. Marriage is so serious; it relates to human life.

20,263. Have you not known divorced people marrying and being happy afterwards?—It would be a strange world if I had not known some cases. I have known cases of people perfectly happy who are not married, but that is not to say that is to be the ideal for the State.

20,264. That is very different. You speak of a man who has embezzled, and say he has no chance afterwards, and therefore probably will embezzle or go to the dogs again. Here is a woman?—My parallel was relative. You are arguing a woman ought not to be punished. The man has been imprisoned for three months, and in a sense the law has fixed three months' imprisonment and wiped out his obligation to the State; but with the other guilty party the State has done nothing. The only way to punish them seems to be by making it awkward for them to continue intercourse with a man or woman, as the case may be.

20,265. You prefer to punish the woman and let her go absolutely to the bad rather than give her the

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chance of again marrying happily?—I should not agree that of necessity she goes absolutely to the bad because she does not re-marry. I have known a number of cases of women who are guilty parties, but after divorce proceedings have been taken they have lived a straight and honourable life and gone out into the world and worked for a living. They do not necessarily go the bad. I do not think the only way by which they can go right is by marrying.

20,266. A woman who has been divorced has less chance of being favourably looked at than a woman who has been divorced and married after?—That is part of her punishment.

20,267. (*The Archbishop of York*.) Your knowledge extends both to the respectable working classes and to the very poor?—Yes.

20,268. What you say is based upon knowledge of both these types?—Yes.

20,269. The standard of obligation in marriage is different in the two strata?—Yes. Before your Grace came in I drew a distinction between the submerged tenth and the working classes.

20,270. I gather you have had many conversations with working men on the subject we are discussing?—A great number.

20,271. What you say is largely the result of a large amount of conversation with working men?—Yes.

20,272. From your experience what do you think in the matter of costs is really prohibitive to the ordinary working man such as you have in the East End? Would 10l. be a prohibitive sum?—I should not say it was a prohibitive sum. The man would have to save up, but I think it could be done in a large number of cases. If there was a real necessity not only the man would raise the money, as it is very often the case among the poor, but if it is a genuine case his friends would come to his help.

20,273. Do not working men save up almost incredibly large sums for many other purposes?—Yes.

20,274. Articles of furniture, and the like?—Yes. People would be astonished at the amount of money that is saved up.

20,275. With regard to making divorce easier of access by bringing courts to their doors, do you think one effect might be to induce newly-married couples who have got cross with one another, to commit adultery on the spur of the moment?—I should say it would have that effect. A great many things are done by uneducated persons on the spur of the moment that would not be dreamed of being done by persons in another walk of life.

20,276. If it were easy to get divorce, one or other would be inclined to force the issue?—Yes.

20,277. I was interested in what you said about the magistrates giving such small sums in the orders for maintenance of wives. Why, in these cases, is so small a proportion of the man's wages allotted to the wife?—I cannot understand the ways of magistrates, because they are extremely strange in some cases. It seems to me the magistrate take rather a lenient view of the man and rather a large view of the man's necessities, and says the man must be able to keep himself respectable; and if he is to be at work he must live well; those things are taken into consideration and dwelt upon too largely.

20,278. Is it possible they may have in their mind that if they give the woman a comparatively small sum it may be an inducement to her to come back?—That may be an inducement, but in many cases it is not the woman so much; it is the man who is the culprit, and the fact he has only to pay a small amount makes him think he can get rid of his wife rather cheaply.

20,279. Your view about separation orders generally, is that they ought to be treated in a much more thorough and careful way?—It is far too lax, and it has grown in recent years. I have not the figures of increase in separation orders, but in the East end they have become far more numerous of recent years.

20,280. Is it your experience that the provision of these large hotels for working men—I do not want to give them their names—has induced men to get

separated from their wives, and live in them?—To some extent that is true; I should not say to a very large extent, but to some extent, the very comfortable way in which they are housed and cared for. A man is better off in certain houses than if he lived at home. His comfort is attended to.

20,281. With reference to desertion as a possible ground for divorce, is it your view, from your knowledge of the ways of people, that supposing a man knew if he went off to America and said nothing for five years, his wife could get a divorce from him, and he would be free, that that would result in men quietly going off by arrangement?—I think it would. As a matter of fact I have known many cases of men who have gone away. They take a fit to go for five or six years, and all at once, without a letter, turn up again in Bethnal Green. Supposing the wife had got a divorce, and the man comes back and, perhaps, does not know his wife has divorced him, it would be detrimental to morality to have that man coming back claiming his wife.

20,282. I am rather thinking of where two people are not getting on together; they do not want to commit adultery, but they say, "We cannot go on, let us part; I shall say nothing for five years, and you shall write to me, but it will not be answered"?—It is possible that would be done.

20,283. In such cases would there not be a disposition to enter into new connections before the period of years had elapsed?—Decidedly so.

20,284. With regard to the practice in Scotland, would it make some difference introducing a ground which has hitherto been unknown in the public and social life of the country?—Yes.

20,285. Would that make a difference from where it has been carefully administered for many centuries?—Yes.

20,286. With regard to your case about a man permanently diseased and yet his wife is unable to obtain a divorce from him, would you say in a large number of instances it might be said such disease as you describe, permanent paralysis, may be attributable largely to a man's own fault?—I should say that strongly. I cannot give you the figures, but in our workhouse, and all the East End workhouses, there are a large number of men suffering owing to diseases brought on by their own fault.

20,287. And many cases of insanity also might be said to be through their own fault?—Yes.

20,288. With regard to permission to re-marry, I want the grounds upon which you were so clear that the guilty parties ought not to be allowed to re-marry. Do you say it is bad for public morality that a man should be able to say to a woman "consent to what I want; I shall get a divorce and marry you and put it right"?—I have known a case of that kind.

20,289. Therefore it might be a help to anyone who was addressed in that way by a man if he were unable to say "I shall put it right for you afterwards"?—Yes. I have had a fairly large number of women and girls who have told me over and over again, when I have spoken to them about their fall and they have spoken to me—this rather relates to the middle classes than the working classes—that the married man had said "if I can get a divorce I will marry you," and a girl has yielded under those temptations. In a large number of cases divorce proceedings have not been taken, and the girl is landed. It may be she has fallen and had a child, and it was really a promise of divorce and re-marriage which has been the cause of her fall to a large extent. It has given the finishing touch to the girl in the temptation.

20,290. That is in the case of a married man?—Yes.

20,291. With regard to the position of a woman seduced by a married man afterwards, is it your view that it is dangerous to public morals for the State to say by its laws "You two may marry again and live happy ever after"?—The higher the view the State takes of marriage, the higher it would be observed by the community at large, and I do not think it is good for the morals of the country that the State should take

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such a view as to permit a man who has violated the marriage contract to marry.

20,292. You said in regard to orders for permanent separation you were against them. Do you refer to magistrates' orders?—Yes.

20,293. You are not referring to judicial separations obtained in the High Court?—No.

20,294. You would still allow for persons who desired that method of relief that it should be retained?—I think so, provided that the greatest possible care is taken in administration.

20,295. (*Lady Frances Balfour.*) Have you had a great deal of experience in desertion cases?—Yes.

20,296. Where the man goes abroad?—Yes.

20,297. Amongst the industrial classes, not only the submerged tenth?—Yes.

20,298. How is that regarded by the people of their own class in the same street? Is the man considered as not doing anything very dreadful?—I can remember two or three cases where the man has turned up again.

20,299. After how long?—Three, four, or five years. I remember three cases now where, when he turned up, the street stoned him.

20,300. Because he had deserted?—Because he had deserted.

20,301. And broken the marriage contract?—Had left his wife, and that was the reception he got.

20,302. The man who deserts cannot be said to be taking the marriage tie very seriously, as you say most of the working classes do?—There are exceptions, and these are the exceptions.

20,303. If they take the marriage tie seriously there will not be many, as his Grace suggested, who would go in for desertion by arrangement to get divorce?—When I say the working classes take the marriage tie seriously, I am speaking of the whole. If you take a small percentage of the working classes it looks a large number.

20,304. Those who desert their wives for five years or more are absolutely regardless of the marriage contract?—Yes.

20,305. It is just as bad for the one left behind as if the woman had got a divorce for adultery?—It may be it is hard for her.

20,306. Do you find that the men, when they go abroad, live with other women?—In many cases.

20,307. It is good for the State they should desert their wives, break the contract at home, go abroad and live with other women?—No. I think the man wants punishing.

20,308. Surely the example is as bad as any amount of divorce, for that reason?—I should differ on that point.

20,309. About those three cases you gave, one was where a man was paralysed; but the woman can fulfil the marriage contract to the highest degree; she can be a companion and help in every way. If he were in prison or in an asylum, she would have no companionship?—So far as that may be one side of the question, but the paralysed man cannot be a comfort and helpmeet to the wife. Instead of being that he is a burden, whereas the other man is not.

20,310. She is tied for better or worse, and she can be a companion, or he can be a companion to her?—The other woman is also tied for better or worse. It is the same marriage service.

20,311. Which other woman?—The woman tied to the man in prison.

20,312. He has broken the contract in a double sense?—

20,313. (*Lord Guthrie.*) Is your view that Scripture allows divorce for adultery confined to Christian marriages, or does it apply to marriages of all persons in England, including Jews?—I should be sorry to say that only a marriage that is performed in church or chapel was to be regarded as a real marriage.

20,314. That is not the question. One has been reading on this matter. The view put forward by a certain section of the Church of England on the question of marriage and divorce is limited to cases where first the marriage has been consummated, and second, where it has taken place between baptised children. Is that what your view is limited to?—No.

20,315. Not where the ceremony is performed?—No.

20,316. It would apply to all?—Yes.

20,317. That being so, take the case of a Christian married to a Jewess in this country: would your view cover that?—Yes.

20,318. What about the Jewess deserting him, and the Pauline exception in the 1st Corinthians?—What I should say with regard to that matter is this. I do not make any distinction between a Christian and a Jew, or Mohammedan and Christian, in marriage. The obligation is the same.

20,319. Do you think that the Pauline exception is no longer the law for the Christian Church under which, if a Christian has an unbelieving wife, and the unbelieving wife deserts him, he is free?—It is an interpretation of St. Paul that I am not bound to accept.

20,320. You do not accept it?—No.

20,321. Have you a view of your own upon that?—Marriage is absolutely binding from a Scriptural view, excepting for adultery.

20,322. Have you a view of the Pauline exception different from what I have suggested?—I do not think St. Paul's rendering of the 1st Corinthians gives us the idea you have given utterance to.

20,323. If that is not it, what is it?—I think there is something in that desertion more than desertion as commonly understood to-day.

20,324. Malicious desertion?—I should be sorry to think St. Paul meant she was free to marry. I take it more as separation. Otherwise the marriage tie is binding that a man and woman ought to live together, but under certain circumstances they may be separated. St. Paul's teaching refers to separation rather than divorce, I take it.

20,325. In regard to the question of extension of divorce to the poor, it is the fact at present they are practically debarred from the remedy?—To some extent. The working classes—I am not talking of the submerged tenth—save up and are different from 30 years ago. In my own parish the working men connected with my service put by 10,000% a year between them, and they can save.

20,326. We are talking of London, where the Divorce Court is at the door, but you do not differ from other witnesses if you take a place like Carlisle or Newcastle, where the expense is very different, so that the working class cannot avail themselves of the remedy?—In a place like Carlisle, I should not take the court to Carlisle, but rather bring Carlisle to London.

20,327. I was asking whether you agree, as things are at present, they are practically debarred?—Yes.

20,328. You would not find any working man in London or elsewhere who would agree that if a remedy is thought right by the State it should be limited to the rich?—I should not say it is limited to the rich. A poor man can get divorce as well as the rich man. There is no bar except in costs of a certain kind.

20,329. Is there a working man in London who would agree that because of cost a remedy thought fit by the State for the people should be limited to the rich, as it is now?—If you ask my view, a large number of working men think the rich should not have a remedy.

20,330. That is a different question. Taking things as they are, if there is a remedy?—If there is a remedy the working man would say it ought to be within his reasonable reach.

20,331. In the case of the working man does he not need, for the protection of his own interests and those of his children, a remedy in certain cases, they may be few, even more than a rich man with his ample house accommodation, and who can probably get some relative to come, or provide a proper housekeeper?—One has to admit in this, like everything else which deals with material affairs, the rich man has the advantage.

20,332. The working man is exposed to temptations from small accommodation which the rich man may escape?—Yes; but on the other hand, even the overcrowding, although in some ways it may conduce to

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immorality, with the mixing up of the sexes together acts as a deterrent.

20,333. What do you mean by that; in what case, I mean?—In many homes in my parish, where there are three or four families in a house, the parents are most particular and careful, and I daresay they watch their children, because there is a young fellow living in the next room, more than the well-to-do classes who may meet a girl in a house.

20,334. You say people who are divorced, if the grounds were enlarged particularly and the poor were swept in, would be apt to come together again?—Yes.

20,335. Have you known under the present law any cases in the upper classes of people being re-married or living together again?—Yes.

20,336. How many? I have never known one?—I have known some, but they are very rare. My knowledge of the upper classes is not as extensive as of the working classes.

20,337. How many have you known?—Perhaps two or three.

20,338. Human nature implies that, I understand?—Yes. The position of the upper classes and the working classes would be different. The upper classes would know what society would think of that, and the visitation of friends, and social conditions, whereas the working classes do not consider that. I should say even in the case of separations among the upper classes the number that come together is smaller in proportion than the number among the working classes, owing to the social conditions.

20,339. You are not able to tell us whether in countries where divorce is allowed for causes other than adultery, and where all the remedies are open to the poor, there have been cases of many people coming together after divorce?—I do not know. I am not sufficiently conversant with other countries. From general reading I do not think you can draw much of an analogy with regard to the condition of the English working classes and foreign working classes, because there is a decided difference on many points. The law of France on certain lines would work out different.

20,340. You would not say there was the same difference between the working classes in Scotland and England?—There is a difference between the working classes in Scotland and England. I have never worked in Scotland, but I have had a number of Scotchmen come south, and their characteristics and mode of life are different from the English.

20,341. In what way?—They are keener as a whole with regard to spiritual things and religious ideals.

20,342. Have you noticed a difference between the English working classes and the Scotch with regard to permanence of the marriage tie?—No; I have not had an opportunity.

20,343. You cannot say if it has been the fact in regard to desertion that that has obtained in Scotland for 350 years and has not lowered the sense of the marriage tie?—I should not like to speak on the Scotch question, because I have not studied it.

20,344. Assuming that, does any reason occur to you why, if that consequence has not resulted in Scotland, it should result in England except the one his Grace put, that it would be a new thing?—A law that has been gradually known for 300 years has a different effect on the people now than if under present day conditions you suddenly have it.

20,345. That would cure itself in time?—That is a question, in these days of the press, and other things.

20,346. You differ from most of the evidence we have had. You thought collusion would be easier among the working class than the upper class. It is suggested that among the upper class they can go abroad and adultery can be committed and nobody knows about it. They can arrange desertions, not having to provide the wife with any support, she being well off, and collusion would be easier among the upper class than among the lower?—I should differ, for this reason: among the upper classes if they go abroad persons can be easily traced, and are, by detectives. You get to know where Lord So-and-so is; you know it easily. But take Tom Jones, a carpenter earning 20s. a week, and he moves from Bermondsey to

Edmonton; he is lost in the crowd; nobody knows where he has been for a fortnight. You would have great difficulties there. A man in society is known: a man among the working classes is not known and traced.

20,347. In regard to separation questions, if divorce continues to be allowed for adultery, it would be sufficient to provide for other cases to have temporary separations?—You have that by law now.

20,348. Does your view in favour of temporary separation depend on divorce for adultery going along with it?—I do not say it does depend on it.

20,349. It is the fact, is it not, every country in every age that has not had divorce has had what are inaccurately called permanent separations?—Yes.

20,350. You do not know any country which has been content with temporary separation and no divorce?—No.

20,351. In regard to drink, you said you would like more drastic legislation and more power to send persons to establishments. Is that in reference to the fact that at present only those are sent who are humanly speaking irreclaimable?—Yes.

20,352. They are too far gone?—Yes.

20,353. You would like to send people who are not at that stage?—Yes.

20,354. With reference to reporting, what about the present practice of having open and crowded courts full of people who have no business there whatever except prurient curiosity; do you approve of that?—No.

20,355. Would you have them shut in such cases?—I think where you have a jury you have the public represented.

20,356. So that you would not only confine the reports to the matters you mention, but exclude the public?—Yes, the jury are sufficient.

20,357. Do you see any advantage in the present system to anybody?—No, not the slightest.

20,358. (*Sir Lewis Dibdin.*) You spoke about a church in East London where marriages were solemnised at 1s. a marriage. Is not the case we used to hear about called the Red Church?—Yes.

20,359. That has for many years been stopped?—Yes.

20,360. When it existed it was an isolated case?—Yes.

20,361. Did you hear of a case of that kind in South London?—No; I do not know sufficiently about it.

20,362. You never heard of any case excepting that?—No.

20,363. Is it your view that a marriage before the registrar would be deemed by the poorer classes as a more binding transaction than a marriage in church?—I should say the reverse, apart altogether from my position. I have talked it over with a large number of people not connected with the Church of England, and their opinion tallies with my own, that the working classes regard marriage in church or chapel as more sacred and binding than in a registry office.

20,364. It has been suggested that marriage before the registrar, perhaps a little reformed and more point given to the contract, a written contract between the parties, making them sign something, would be regarded as a legal matter which must be attended to, while the religious ceremony is regarded as something mystical which they do not understand and do not feel bound to obey more than they like?—The mystical really appeals to the working classes more than the things they know; you may call it hereditary superstition if you like. Because a thing is mystical it has a greater hold than the other way about. The great mass of the working classes I should unhesitatingly say regard marriage in church or chapel as more binding. They have to sign their names in the vestry; up to recently in the chapels the registrar had to be there as a civil servant of the Crown. I do not think the fact he was there added to the importance in the eyes of the persons; in fact, being married in chapel was the real thing they thought about.

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20,365. You consider that the working classes regard adultery as the one ground on which divorce ought to be granted?—Yes.

20,366. That is a clear and established principle in their mind?—Yes.

20,367. There is strong public opinion to that effect?—Yes.

20,368. I regard your evidence as saying that any other grounds which do not involve adultery would weaken the feeling which now attaches to the marriage tie?—Yes.

20,369. If you added one particular ground that would weaken the feeling to a certain extent?—It would, for this reason: If you added any other ground, say insanity or imprisonment, you would get men saying, If marriage is to be annulled for insanity, why not for this and that—and they would think the law was irregular and unfair.

20,370. You get outside principle?—Yes, and the working classes would regard it as unfair. Now if a man or a woman has not committed adultery and the other has, they put up with it and realise it is for better or worse. If you make one exception and do not make a dozen, they would get the idea the law was unfair, whereas they think it is fair as far as the question of adultery goes.

20,371. That is a clear principle they understand?—Yes.

20,372. The more grounds you introduce which do not involve adultery the more the confusion would be as to the fairness of the law, because they would be more outside the principle they understand?—Yes.

20,373. That is your view?—Yes.

20,374. When you say the wealthier part of the community would be affected by the enlargement of grounds of divorce, that is what you mean?—Yes.

20,375. You do not regard it as a fair representation of your evidence to say that you regard it as good for the State that a husband should desert his wife?—No, it is decidedly bad, because I am stringent in my capacity as Chairman of the Board of Guardians on that question.

20,376. Take desertion. A working man deserts his wife and young children, goes abroad and is not heard of any more. If a divorce were granted you have told us one difficulty which has occurred to us all before is how the children are going to be supported. That is bad enough now?—Yes.

20,377. If there were a divorce one of two things must happen; either the man must have laid on him for life the responsibility of a weekly payment for his former family, or it must be left to the State?—Yes.

20,378. Do you think it likely, in a case where you could get hold of the man and get an order for a permanent payment of that kind it would be kept up?—No. The man would say "The State has freed me from my wife, and I do not see why I should pay," and away he would go. Now there is a difficulty with regard to separation orders.

20,379. Whatever difficulty there is with regard to separation orders would be intensified by divorce?—Yes, a hundred times.

20,380. If he did keep up the order on an ordinary working man's wages, would he be in a position to keep his first family and support another too?—No.

20,381. Suppose he did not take care of his family and the State kept them and he went away scot-free and started another establishment, is that desirable?—Very undesirable.

20,382. That the working man should feel he could beget a lot of children, desert them, start another family, and the State will look after his progeny?—I think that would be decidedly bad, and that is one reason against facilitating divorce.

20,383. The principle in the mind of the working classes as to divorce being allowed for adultery alone, whatever sanction it may exist upon, you would say is largely founded on their view or their forefather's view of what Scripture commanded?—Yes. There is among the working classes the religion of the irreligious. You have apparently among the most irreligious underneath a subconsciousness of religion, and this view of adultery is formed on that.

20,384. Rightly or wrongly, as a matter of interpretation they think so?—Yes.

20,385. Lord Guthrie asked you about the Pauline exception. I have no doubt I am wrong, but I was under the impression that the ordinary interpretation of St. Paul's words, which are called the Pauline exception, had reference to a case where both parties were married in heathenism and one became converted. Does that agree with your recollection?—Yes.

20,386. That is not the case that Lord Guthrie was putting, of a Christian marrying a Jewess?—No.

20,387. It was a case which in England can very seldom arise?—Very seldom.

20,388. In many of the colonies it may often happen, but in England two persons marrying as heathen in England and one becoming a convert, must be a very rare case?—Very rare.

20,389. With regard to separation orders, you are against their being permanent? Are they permanent in the sense the parties cannot come together? Would it not be more accurate to describe them as indefinite? They last till the parties choose to come together?—Yes.

20,390. I understand your criticism of that system; it is that they are apt to be regarded as something like an injunction, not to come together?—Yes. Men have said to me, "Can you tell me whether I can see "my wife," and I have had to explain, yes, if she was willing to see them.

20,391. Would it not remedy that state of things if the magistrate had power to put an end to an order on an application, that the circumstances had changed, or to reduce the maintenance because the man's means were less, or increase—it to give a general power of dealing with the order on fresh evidence?—Yes, that would be desirable in every respect, because I have known when a man knew he was going to be summoned by his wife for a separation order he has thrown himself out of work, so that when he comes before the magistrate he says "I am out of work," and gets a low order, and immediately after he gets into work.

20,392. Would you be in favour of all that class of applications being dealt with in a court constituted like the new Children's Court?—Quite. It is bad for them to be classed with drunks.

20,393. It would be fairer to the woman who has a hard struggle to tell her story?—She goes into court, and it is filled with riff-raff of all kinds; perhaps she is sensitive; a lot of the women among the working classes are as sensitive as any woman on the face of the earth. It is a terrible ordeal, from which a woman shrinks, as it is in the police courts in London.

20,394. You have spoken about reconciliations, and cases where the reconciliation has been a false one because the maintenance was not paid, or was so small they could not live. It would not be fairly representing your evidence to say that represented the bulk of the cases?—No.

20,395. Do you come across a large number of *bona fide* reconciliations?—Yes.

20,396. In those cases, if there had been divorces, the evil you have told us about would ensue?—Yes.

20,397. With regard to the cases where the wife is forced back by poverty?—They are very few.

20,398. You have known those cases?—Yes.

20,399. It seemed to me the case of the woman whose husband had got 28s. a week and she had 3s. for herself and child, was a case of that sort. You suggested the magistrate sometimes made the maintenance small so as not to encourage the wife to go on living separate?—Yes. It is bad in principle; it works out worse.

20,400. Is not that a wrong principle?—Yes.

20,401. However much we desire to encourage reconciliation, to deliberately put on the pinch of lack of means to drive them back is one of the evils we have heard about?—We are in this difficulty: the woman does not know what to do; she applies to the board of guardians, and we say, "the magistrate has dealt with this case and has considered your means, "and says 3s. a week is sufficient, and to over-ride the "magistrates is a serious matter," and the guardians,

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as a whole, rather shake their heads at an application from a woman separated from her husband in respect of her money. So that the woman is between the devil and the deep blue sea and does not know what to do.

20,402. You are against local courts and bringing divorce to the doors of the poor. On the other hand, supposing divorce is kept as a jurisdiction to be solely exercised at headquarters in the High Court, you would not be in favour of one law for the rich and another for the poor?—No.

20,403. You would be in favour, by simplification of procedure, of helping the poor, or in other ways making it possible for the poor man to go to the Divorce Court where he has a proper case?—Where he has a proper case. I am anxious we should not advertise facilities. I am afraid if courts were set up in localities and were known as courts where divorce is granted it would be multiplied.

20,404. We have heard sad cases, where a respectable man with a bad wife has saved up money for years to get freed where there has been misconduct of a gross kind. In such cases would you be in favour of there being some assistance by the machinery of poor men's lawyers?—As I ventured to state here, if there is to be any alteration, I should prefer that means should be given to the man to appear before the High Court rather than the High Court should be distributed all over the country.

20,405. The effect of that evidence is discounted by the first words, "If there is to be any change." Are you in favour of a change of that kind, or not?—I am in favour of this: I think the working man who has legitimate grounds for divorce ought not to be debarred absolutely; but the way it is done wants the greatest care, or else more mischief will result than good.

20,406. You told us of three cases—you were fortunate in having such apt ones ready—one where the husband was paralysed, another a lunatic, and another a long-sentence man?—Yes.

20,407. It was rather put to you, with regard to the lunatic, the danger was his coming back and procreating more children?—Yes.

20,408. Does it strike you that is a reason for divorce? Is not that part of a different problem?—Quite, and the man who is addicted to consumption and breeds children to the world who have consumption, just as much as the man who has been insane.

20,409. That is the case I was going to put. I am glad you anticipated it?—It is part of a large problem.

20,410. Would not the same doctrine apply in the case of a tuberculous person, or a man with very decided cancerous taint in his family, that there ought to be a separation if it is to be on that ground?—There is greater need for some legislation with regard to consumptives than insanity.

20,411. Is not that part of the problem of national health, a very real one, as to marriage rather than as to divorce?—Quite so.

20,412. (*Judge Tindal Atkinson.*) I do not know whether you have worked out any practical scheme by which the poorer classes of the community can reach the High Court?—I have not worked out a scheme, because I am not in Parliament, but I feel if you could have any certain —

20,413. I want to know if you have worked out a scheme which you have in your mind, and which you could put before us in some shape, so that people in remote parts of the country can reach the High Court, having regard to the expense they are put to, principally in taking up their witnesses?—In each of the large centres of population it might be advisable to have some court distinct from other courts, where investigation could proceed, but I would not allow that court to have the power to grant a rule nisi; after that, if the case is considered worthy of inquiring into, I should allow it to be taken to London at the public expense.

20,414. That means where the parties cannot afford it, the public is to pay all the cost?—Yes, just as they do largely in criminal cases.

20,415. What do they do in criminal cases? They pay the expenses of the prisoner for his defence: that is all?—Yes.

20,416. They pay the cost of the prosecution as a matter of public interest?—Yes.

20,417. Your scheme is that the State is to pay all the costs of taking these parties to London?—If there is a case to be taken to London.

20,418. Supposing that is not a remedy, and the State will not do it, are the poorer classes to be left without any remedy?—I should say not. It is for the State to find out the remedy.

20,419. Then to what court must they resort?—I should say both the county court and the police court are bad.

20,420. You say they ought to have a right to a remedy. If you exclude the High Court, to what courts, then existing courts, are the poor to go?—I do not know.

20,421. There are only three, the county court, the stipendiary magistrates, and the county benches. Take those three courts: where are they to go?—None of the three.

20,422. You exclude their having a remedy?—Because I think the remedy would make the disease worse.

20,423. Your opinion is that assuming the High Court cannot be reached, the condition of things is to be left as it is at present?—Yes, but I think the High Court could be reached.

20,424. I am only putting the assumption that it cannot be?—If you have three courts to go to, I should prefer no remedy rather than going before any of the three courts.

20,425. Your strong objection to county courts and stipendiary magistrates is diversity of opinion?—Partly; that is not the whole reason.

20,426. You reduce the grounds of divorce to adultery?—Yes.

20,427. That is a question of fact?—Yes.

20,428. Why should there be diversity of opinion? That only depends upon evidence. Why should there be diversity of opinion on a pure question of fact—adultery?—If I may express an opinion, I have been in courts and seen cases tried, and, with due deference, I have thought the evidence pointed one way, but the magistrate takes another view. Even on the evidence there is diversity, even on facts, or alleged facts, and on the credibility of witnesses.

20,429. That only means you disagreed with the magistrate and were more competent to judge?—No, I do not say I was more competent to judge, but in my opinion he was wrong.

20,430. You say there is a very high standard among the working classes with regard to the marriage tie?—Yes.

20,431. And yet you think they are of such a low stamp that if they want to go to county courts they would commit adultery to get there?—No.

20,432. I understood you to say so?—I do not think what I said could be construed in that way. What I said was conducive to my facts. I say 75 per cent. of the working classes are moral, but the divorce courts are not dealing with that 75 per cent.; they are dealing with 25 per cent.: it is among that 25 per cent. where you would have collusion.

20,433. We are not dealing with the 75 per cent., because they never want to go into the county court, and therefore you are dealing with the 25 per cent., and it is for them that a remedy is provided. Your opinion of the English character is so low that you think in that 25 per cent. there would be a considerable proportion of people who would commit adultery to get a divorce?—In the 25 per cent.—not the 75 per cent.

20,434. Have you considered this matter. At present the expense of getting to London is insuperable. Suppose a man living at home is grossly immoral, but does not ill-treat his wife or children? It is necessary that the children should be removed from his influence as soon as possible, is it not?—Yes.

20,435. How is it to be done in the country, a place some distance from London? You cannot touch

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him under the Separation Acts because he is not guilty of cruelty. He is only guilty of grossly immoral conduct. How will you get those children from his custody?—I do not want cruelty to be allied to adultery. I want a woman to be able to get a divorce for adultery only, and therefore that particular case would be the means of that man coming to the High Court.

20,436. The woman wants to get the children out of the custody of the husband and takes proceedings. At present she must come to London to do it. That is impossible on account of the cost. I am mentioning a case I know. How is that woman to get any relief?—That is what I put down. In a case like that you should have some local court to investigate, and if that court finds as you state, that case should be brought to London at the expense of the ratepayers or the taxpayers.

20,437. If you cannot get the ratepayers or the taxpayers to pay that, are the woman and the children to be left without a remedy? Are they to remain under the influence of an immoral parent to their own detriment for the rest of their lives?—If you cannot get the State to make financial provision you cannot get the State to take much notice of the case at all.

20,438. You would leave things as they are; you would leave that particular case where the children cannot be removed from the most grossly immoral surroundings?—If the law is not altered. I should alter the law.

20,439. Only by making the State pay the costs of bringing it up to London?—If it is a very poor case.

20,440. One question about separations. Take the case of a man who goes to America for four or five years, and forms a fresh connection, and leaves children here, and has children there, and deserts the American spouse and comes back again and lives here upon the wife. Do you think it is a good thing for those children left behind that they should be brought within that man's influence?—It depends on the character of the man when he comes back.

20,441. I am giving the case of a man who comes back. I have a man in my mind now. He goes to America and comes back because he does not get work in America, for the purpose of living on his wife, and he forces himself into the home. Are those children to be left under the contaminating influence of that father?—In a case of that kind the wife could get an order of separation, I should say, on account of desertion.

20,442. You would not allow divorce while he is away?—No.

20,443. When he is in America, how is she to get the separation order? How is she going to serve the summons?—She cannot. When he comes back to England she can.

20,444. She has been five or six years in England without any separation order, and he comes back?—She has been no trouble to him.

20,445. Where is the separation if he insisted on living with her?—She applies to any magistrate.

20,446. If he lives with her how can she apply for a separation order?—Maintenance is the point. I do not think she would.

20,447. You think it is a good thing for children to be under that man's influence?—No, any more than I think it is good for children to be under the influence of a drunken father.

20,448. One word on the question of publication. Your idea is that there should be no publication?—Of evidence.

20,449. You would give the names of the parties and the decree?—Yes.

20,450. And their addresses?—Yes.

20,451. Would not that soon merely amount to a Gazette notice of the proceedings, and would anybody read it?—I do not think anybody would be worse off for not reading it.

20,452. Is there not a very strong deterrent when they know that there will be a publication of all the details?—No. I think the more you advertise these things—I know it in criminal cases, when Charles Peace was about, his exploits led many a young fellow

to be a burglar. The very details of the Divorce Court induce people to commit the crime rather than deter them.

20,453. Do you not think there are a number of people who would be co-respondents if there were no publication?—No. In their set or society it is well known who is the co-respondent. If it is known Lady So-and-so has a divorce from her husband, all the people of her set about whom she cares say "who is the co-respondent"?—So-and-so. It is known. You do not need to read the "Gazette" or the papers to know the details in their set, and outside that set a man snaps his fingers. It is only his own set a man cares anything about.

20,454. (*Mr. Brierley.*) You are of opinion that the magistrates are far too lenient to the husbands in the matter of fixing the maintenance in separation cases. Can you suggest any means by which the legislature could bring about a better state of things?—No, I have never thought how to alter the matter from a legislative point of view. You are bound to leave it to the discretion of the magistrates.

20,455. Greater intelligence on the part of the magistrates is the only remedy?—That is the only remedy, and I am not responsible for that.

20,456. You said in a matter of adultery women of the working class are just as sensitive to the infidelity of their husbands as women of a higher class. I agree with you. Would you be in favour of adding adultery to the grounds upon which a separation order can be made?—I should say yes. I should say adultery was a far greater cruelty than blacking her eyes.

20,457. Whatever additional opportunities for divorce may be given, you would be in favour of that?—Yes.

20,458. And also of the husband being able to get an order on that ground?—Yes; I think it would raise the tone of marriage.

20,459. You said you were in favour of extending compulsory powers to the magistrates of sending to an inebriate home cases of drunkenness. At present the powers depend on the willingness of the wife to go?—Yes.

20,460. Have you had experience, as chairman of the board of guardians, of the results of these compulsory orders?—The time is too short in the inebriates' home, and, further, I do not think we have found the best way of dealing with a number of these cases in the homes.

20,461. Some people are of opinion unless the woman is willing to be cured, there is not much hope of success?—I should rather think so. If you made it two or three years, with proper treatment, in a large number of cases it would be helpful.

20,462. You wish there should be compulsory powers?—Yes.

20,463. (*Mr. Spender.*) With regard to working-class opinion, you told us your view was that working-class opinion was against the extension of grounds of divorce beyond the cause of adultery?—Among the large majority of the working classes.

20,464. You would not say that was the opinion of working-class leaders—I mean the more prominent members of trade unions and friendly societies?—Among them you find a certain percentage who would be against any extension, but even among the great mass of the working men I should unhesitatingly say there was a feeling against any extension.

20,465. If you take the more intelligent and the more thinking artisan class, you would not say that opinion was against the extension of it to causes like desertion?—I do not know. I should say so, from my experience.

20,466. As regards the effect of these possible extensions, you said there were 75 per cent. of the working class —?—I used that roughly to illustrate the point.

20,467. Whose view of marriage was a strict and exalted one, and 25 per cent. of a lower opinion with regard to the marriage tie?—Yes.

20,468. In estimating the effect of extensions of divorce we have had two views put before us, taking roughly that division, and a good many witnesses have said your 75 per cent. will not be demoralised, and your

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25 per cent. cannot be demoralised because they are living at a low standard?—In the 75 per cent., not now, but in 5 years' or 10 or 20 years' time, you would gradually find a lower ideal. Separation orders, for instance, have worked mischief.

20,469. Among the better working class?—Yes, although I agree with separation orders in certain cases: yet the lax way they have been administered has proved detrimental. I am confident among the working classes generally there has been a marked disposition to apply for separation for little things that years ago people would not have dreamed of separating for.

20,470. Even among your 75 per cent.?—Yes, among a certain percentage of those.

20,471. With regard to the question Sir Lewis Dibdin put on the possible extension to the ground of desertion, I did not follow your point with regard to the children in those cases. The case I understood Sir Lewis was aiming at was a man who had gone abroad and could not be found. You said the interests of the children would be affected by giving his deserted wife a divorce. How could that be, on the assumption the man cannot be found? How could the children be worse off?—I did not understand that. I understood the case to be one in which the man came back again.

20,472. Is it not within the capacity of the courts to make settlements?—I can see numbers of complications. I have known girls and boys of 13 and 14 years of age who have a passionate love for that father who has gone away, and when he comes back, if their mother had married again, it would lead to a dislocation of the whole family life—for desertion.

20,473. The point was a pecuniary one—whether maintenance could be provided for the children?—I do not think it could, in two families.

20,474. What distinction do you make between separation and divorce in those cases?—In separation the chances are that they come back again. The figure I gave from the Justices Clerks' Association was 51 per cent. I think it is larger. In separation orders people come together in large numbers; but I do not think they will in divorce.

20,475. We are considering the minority of cases which would otherwise be the subject of divorce in which they do not come together again. I do not want to press you unduly. In what respect would the children be worse off under a divorce than under a separation in those cases, assuming the parent does not come back?—They would not be any worse if they do not get anything, but I think it would lower the tone of the community at large, and therefore the individual children must suffer for the general welfare of the community.

20,476. The particular case is one which *prima facie* would be an equally bad case under a separation order as under a divorce?—Yes.

20,477. That is so in those cases: they would in those cases be as badly off?—Yes.

(Sir Lewis Dibdin.) Your point is that they would not be better off under a divorce than under a separation?

(Mr. Spender.) I thought he meant they would be worse off.

20,478. (Chairman.) If the woman was divorced she could marry again and help the children. That is the substantial alteration. The order for separation would not be any use?—No, not in that way.

20,479. But divorce would?—Yes.

(Sir Lewis Dibdin.) If she found a suitable partner.

(Chairman.) Thank you, very much. We are very glad you have been of such assistance.

Sir EDWARD HENRY FRASER called and examined.

20,480. (Chairman.) You are a solicitor practising at Nottingham, a justice of the peace, and alderman of the city?—Yes.

20,481. Did you communicate with the secretary with a view of giving evidence, or were you asked to do so?—It was suggested by his Grace I should give evidence before the Commission.

28,482. First of all, with regard to jurisdiction of the courts, we have been told over and over again at present the poorer classes cannot, through the expense of proceedings, bring their cases before the High Court. What is your view as to that?—If jurisdiction is to be given to any court other than the Divorce Court in London it should go to the assize court and not to the county court or to the magistrates. My view is that, especially in the large centres of population, the county courts are so congested with a different class of business, the mere debt collecting and the thousand and one grounds of jurisdiction, that, in my view, neither the time nor the attention could be given to this new class of business that its importance demands.

20,483. Do you think the assizes would be satisfactory? We have heard a great deal of complaint about them on other grounds in the last few years?—They would be more satisfactory in this way. People are more impressed by an assize judge on the bench, and all the formality and solemnity of a court, than by a county court judge.

20,484. Do you think they would have the expense at their command to go there?—I thought the county court was to be a cheap court, but I submit it is anything but cheap. The scales are heavy. If you require professional advice or advocacy you have to pay for it. The economy is not very apparent to me.

20,485. The expense of witnesses is one of the points?—They have to be paid for. They have their scale of allowances. Practically there is not very much in it.

20,486. You prefer the assizes?—Undoubtedly.

20,487. You suggest a judge especially appointed, such as a High Court judge travelling round?—I suggest that as an alternative, either go to the ordinary

assize court or have a judge on circuit to try this special class of business.

20,488. With regard to separation orders, have you had much experience?—I have been a magistrate for some years, and I have watched the effect of them as closely as it is possible to be done.

20,489. What do you think of the system as it at present stands?—If the magistrates are experienced and careful in the administration of the Act, I think the system has done a great deal of good.

20,490. How many orders have you had at Nottingham?—I have taken out the figures for three years. In 1907 there were 233 applications, and of those, 158 orders were made. With regard to the grounds for making the order, in 89 cases the ground was desertion, and in 55 cases the ground was cruelty; in 14, neglect to maintain.

20,491. In the desertion cases was the order a separation order, or only for maintenance?—Maintenance and separation in that year.

20,492. Why do you put in separation when it is not necessary?—I am merely reporting the result. The result was 158 orders for maintenance and separation in 1907. It varies as we get further on. Orders were made in about two-thirds of the cases. In those cases of desertion and cruelty, if I may venture an opinion now, a very large number of those cases arise from the fact that the applications are made by people comparatively early in their married life. They get married with scanty acquaintance of each other; often their living is precarious, the man is in casual employment, and the moment the income stops, either from unemployment or anything else, there is chaos in the home, and the husband goes; the wife goes back to her people, and they start on these cases of desertion.

20,493. Have you the figures for 1908?—Yes. The number of applications made was 196, and orders made in 125 cases. The ground in 69 cases was desertion, in 48 cruelty, in 7 neglect to maintain, and there was one case of a separation being granted on a summons or warrant for aggravated assault.

20,494. What were the figures for 1909?—181 applications, 122 orders made: 76 for desertion, 37 for

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cruelty, 9 for neglect to maintain. The orders for maintenance only in that year were 34, but for maintenance plus separation, 68. The number, so far as my own locality is concerned, is slightly diminishing.

20,495. In the last year you separated the order for maintenance and separation?—Yes. There were 54 orders for maintenance only, and 68 with the double remedy, maintenance and separation.

20,496. In the two previous years you do not seem to have separated them?—No.

20,497. That is the effect of some of the recent decisions?—I think it is. There are a few cases under the Licensing Act, 1902. In 1907, 1908, and 1909 two orders have been granted in each year on the ground of habitual drunkenness.

20,498. Against the wife, or for her?—My belief is in every case it was against the husband. Two orders were made in each year.

20,499. Can you tell us whether all those cases were reconciled?—So far as my experience goes, and from inquiries I have made into a multitude of cases, the number of reconciliations is a very large proportion. They were brought about by lack of means, and sometimes by ungovernable tempers on the part of the parties; they had not learned to settle down together. Afterwards they are all right.

20,500. What proportion of those orders have remained permanent?—There is no record to show that. The parties come together and the register shows no result. I am sure the Commission may take it for granted a very large proportion were reconciled.

20,501. What has happened to those who were not?—In many cases the wife has gone back to her people; we have a very large female population in our town engaged in the lace trade. They simply go back to their parents and continue their employment.

20,502. In the mills?—In the mills and lace factories.

20,503. What became of the men?—The man often goes back to his own people. It has an extraordinary effect. In a great number of cases they dissolve their hasty marriage, and each party goes back to their parents.

20,504. Do you find they go to someone else?—I think in a very small proportion of cases.

20,505. Would you be in favour of transferring the magistrates' jurisdiction to the county court?—I think I would as soon have the decision of two or three experienced magistrates to the opinion of the county court judge on matters of this sort.

20,506. Would you extend the jurisdiction of magistrates to include a separation for adultery?—Yes.

20,507. At present you cannot?—I understand so. Adultery should be a ground for separation, I think.

20,508. Do you agree it should be a ground of divorce?—It is a ground of divorce.

20,509. Not within the reach of the poor?—It is within the reach of the poor except in the matter of expense. That might be modified by relieving them of court expenses in some way to assist them. The difficulty of being so far away from London has been got over in other classes of the community. With the cheap transport facilities we have now it is not so bad as it appears at first sight.

20,510. What have you to say on the question of publication?—I think the clean-minded members of the community ought to be protected from the torrent of filth poured forth largely by local papers.

20,511. Do you find that so in Nottingham?—There are more extensive reports in the local papers than I like, but we are inundated with the cheap Metropolitan papers which give these long reports and which can only be productive of evil.

20,512. Is that a matter of opinion, or have you had practical acquaintance with the results produced by it?—I have talked the matter over with all sorts and conditions of men, working men and men in good position, and I believe the feeling is universal against the publication of these things.

20,513. On the question of procedure you do not wish to give evidence?—Not in the existing court.

20,514. Have you not formed any opinion?—I have had some practice in the Divorce Court, and been pro-

fessionally concerned in cases where divorces have been obtained by people of moderate means as the result of saving over a long period to raise the necessary funds.

20,515. What is the longest period of saving you have known?—Three years, I remember, in one case. I do not see any objection to that, because it gives them ample time for reflection, whilst saving, whether to go on or not.

20,516. You do not deal with any grounds of divorce. Have you formed any views?—I think it should be confined strictly to adultery.

20,517. Would that be the same for man and woman?—I should place them on the same footing.

20,518. You would eliminate those extra points that a wife has to establish?—Yes. I should leave it on the bare crime of adultery.

20,519. Why do you confine it to that?—I am afraid if you once get off the solid rock of that offence and—

20,520. Why insert it for that offence? I do not understand why you allow it for that and nothing else?—Because it is quasi-criminal against the marriage contract; it is criminal.

20,521. You regard it as a worse offence than leaving a woman for ever?—Yes. I think it is the basic fact on which the whole foundation rests.

20,522. (*Judge Tindal Atkinson.*) You do not practise in the county court?—I have for years.

20,523. I daresay you understand although the fees are rather large in the county court the officials do a great deal of work for the money: the parties are not put to any expense in service of the proceedings?—I believe the officials allege, but it is common ground of complaint, at all events in my branch of the profession, that the fees are exorbitant.

20,524. Do you say in your county court that the summonses are not served?—No.

20,525. We have a settled scale of costs, both High Court and county court, and there is a great deal of difference between the scales?—Yes.

20,526. If you have two scales of costs, one for the High Court and one for the county court, they would be more in the High Court?—I suppose they would be so marked to be smaller, but as a matter of fact litigation is not cheap in the county courts. I daresay you know better than I do. It is supposed to be cheap, but I know it is not.

20,527. I think it is the other way. You say the assizes could do the work?—I think they could.

20,528. It would be essential that there should be fixed days to take divorce cases, to avoid taking people to an assize town and keep them waiting two or three days with their witnesses?—I do not see why the divorce business should not be taken at the end of the regular jurisdiction.

20,529. Take Nottingham: the judge comes and he may have 25 criminal cases to try?—That would be a large number.

20,530. Well, say 20?—I should not think so.

20,531. In his criminal cases he may have three or four murders?—I trust not.

20,532. You have known them?—I have known a murder case or two.

20,533. And a manslaughter case?—Yes.

20,534. At the end of his criminal list, which he must take first, there will be a civil list of 10 causes?—Yes, but he is joined by another judge.

20,535. That does not apply to all?—No.

20,536. When there are two judges they could arrange it. The county court judges have a certain number of days to spare; they do not sit every day?—They do not.

20,537. And they can fix special days?—They could; but as a matter of practice they do not. The experience is that they crowd too much business in too small a number of days.

20,538. The remedy is to increase the number of days?—It is more or less in the discretion of the judge.

20,539. (*Lord Guthrie.*) Would you keep the courts for the trial of divorce cases open or shut?—I rather fear the effect of public opinion on closing the court, because from the point of view of the general public

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it might be felt that the court was shielding the wrongdoers by endeavouring to prevent publication.

20,540. Do you say the same about criminal courts—that they have the effect of inducing people to commit crime?—I think they have. If you get a case of fraud or robbery perpetrated under very resourceful surroundings, the fact of it getting abroad tends to sharpen the criminal.

20,541. Would you shut them or leave them open?—I doubt whether it would be safe to close criminal courts.

20,542. You would apply the same rule to both cases?—Yes; but the publication I should leave.

20,543. (*The Archbishop of York.*) You say you think divorce jurisdiction might be exercised either at assize courts or by a judge specially appointed to take that business. By the latter you mean a judge of the present Divorce Court?—Or a judge of the superior court—a man of the rank of the judge of the superior court.

20,544. Which of those two alternatives would you prefer?—I think the assize court.

20,545. Would it have the same merit of bringing to the discussion of these cases the special experience of a judge of the present Divorce Division?—There are only two judges in the Divorce Court. One would not be available to do the circuit business.

20,546. Would you see any objection to their appointing special commissioners to deal with special cases locally, and retaining the jurisdiction in their own hands?—That would be a better remedy than the mere small local courts.

20,547. Since 1907 the number of separation orders made in Nottingham has been greatly reduced, from 233 to 181?—Yes.

20,548. Why has there been that substantial reduction?—I cannot give any specific reason. It applies to each year. The number diminishes in 1908, and again in 1909.

20,549. Is that due to greater care on the part of magistrates in granting orders?—No, the number of applications is reduced, as well as the orders.

20,550. You can give no reason for that?—I do not think there is any special reason.

20,551. Do you think it would be a good plan for the courts in Nottingham to treat these matrimonial difficulties in a special court at a special time rather than with the ordinary magistrates' business?—I do not think there would be any objection to that course, and I do not think there would be much gained, really.

20,552. (*Sir William Anson.*) There is a great variety of business in a crowded court. Would it not be better to have something analogous to the children's court, either a portion of the bench in a different room or a different time assigned to these cases?—I do not think there could be the least objection to that.

20,553. You do not see any advantage in it?—I do not see any clear advantage. At the same time I am sure the magistrates as a body would be prepared to sit in a separate court. I doubt whether anything would be gained.

20,554. Are separation orders granted at once on the application, or do the couple desire to take time, and the case is adjourned?—As a rule there is a little delay. They are constantly advised to go back and think the matter over and come again. Many people go back and never come again.

20,555. That short interval is an advantage?—I think so. Many people go to the courts, especially the local courts, in a frenzy of passion which soon wears itself away.

20,556. Some of these separation orders, or a good many, arise from early marriages, thoughtless marriages, and the parties quarrelling?—My point is that the woman and man are young, and the courtship is of short duration. They do not know each other, and when they are married they cannot settle down. Neither is prepared to make any concession. A proportion of these cases are sheer temper and nothing else.

20,557. Can you suggest a method of bringing the serious nature of the marriage contract more home to them, such as obtaining the consent of guardians or parents in the case of minors, or proof that a man is able to keep a family?—Any change that would make them understand they are taking each other for better or worse would be for the good, and would be better than tinkering with the divorce laws, if you could impress on them the solemn nature of the step they were taking.

20,558. You would not go beyond adultery as a ground for divorce?—No.

20,559. Is that because it is a fact about which the existence or non-existence is capable of proof?—I would not admit anything else.

20,560. Take desertion, which is described as malicious desertion?—To use a common expression, I dread anything being done which would cause our marriage institutions to be Americanised. That is what they have done in America. They have made first one exception and then another, till now they are in chaos.

20,561. Supposing you allowed cruelty as a ground of divorce, it would be what is described as aggravated cruelty?—Cruelty is a ground for separation, but I would not permit divorce on such a ground.

20,562. The question of what was aggravated cruelty might be a question of opinion?—Yes.

20,563. And the same with habitual drunkenness?—Yes: there is room for all shades of opinion as to what constitutes cruelty.

20,564. You may get a variety of decision?—Yes.

20,565. And great relaxation of the law?—Yes, you would get it.

20,566. (*Mr. Spender.*) You would hardly say that marriage is Americanised in Scotland?—No.

20,567. Where desertion is a ground for divorce?—Apparently it is an ancient ground. I think the Scotch are much too reticent, and altogether better than to adopt any American systems if they can altogether avoid it.

20,568. (*Chairman.*) Do you think the proper remedy for the cases where people cannot live together is separation of a permanent character?—I should not regard any case as hopeless. I think the separation order probably in its first inception should be for a limited time; it should be a provisional order. It might be reconsidered and made fairly permanent afterwards.

20,569. Supposing the judge came to the conclusion after the trial that a temporary order would be hopeless, would your remedy be simply to permanently separate them?—Yes. I should not go further.

20,570. Why not?—Because I should be uncertain if I did it whether I should be making matters better. I have always had that feeling when these questions are considered that it is the selfish interests of the man or woman that are considered, and not the interests of the family.

20,571. In the case I was suggesting, if you came to the conclusion it was hopeless, that they were bound to live apart and would form other connections, would you still maintain the same view?—I would not grant a divorce. I should be slow to take any case as being hopeless between a man and woman once married.

20,572. Where they have become permanently separated and one was living with another person altogether. You put the divorce on the ground of adultery?—If a divorce were granted it should be for adultery and not any cause short of that.

20,573. If they were separated and one living in adultery, that you would admit as a ground of divorce?—That would be a good ground of divorce.

20,574. The class of case one has met with so frequently, although it has been got over after long delay, is where the husband has gone abroad and is probably living in adultery but it cannot be proved. Would you require a different principle there?—If a thing cannot be proved I could not take it for granted.

(*Chairman.*) We thank you very much for your evidence.

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[Continued.]

Mr. WALTER HENRY JONES called and examined.

20,575. (*Chairman.*) You are an alderman of the Stepney Borough Council?—Yes.

20,576. What is your professional position apart from your aldermanic position?—I am cashier of the Tilbury and Southend Railway.

20,577. How have you come across divorce questions in that capacity?—I am now turned 48, and all my life except the first six months I have lived in East London. It has been a hobby of mine to mix myself up in societies of every sort and description, not only connected with the Church. I happen to be a churchwarden and have been for many years, but I was also on the old vestries. I am a guardian of St. George's, and am on the borough council. In that way, and living in the East End all my life, I have been brought into contact with the poor, naturally. It stands to reason in that case I must have heard it if there had been any cry-out for greater facilities for divorce.

20,578. What cry out do you mean?—If the poor were asking for greater facilities for divorce I think I must have heard something about it.

20,579. You have met with no cases where the poor have desired to get a divorce?—Not one.

20,580. You do not think it exists?—I am sure it does not. The other day I was speaking to some typical East End women, not a large meeting, about 60 mothers, on the question, and I told them where I was coming, and asked them to let me know at once if there was anything I was going to say they would rather I did not say, and those mothers were very emphatic. They said, "We require no divorce whatever. Let the rich have it if they like: we do not want it." "We will bear our lot" was their expression, which meant they did not expect marriage life to be easy.

20,581. Do you really think there are no people who are not ready to bear their lot?—There are some, of course. It is not everybody that is willing to bear their lot, but I am speaking of my experience.

20,582. How do you account for the fact that you have not come across any cases?—I cannot explain it except that the people I have come across do not desire divorce, and I think it is a typical place. There is nothing special about our parish. I take it they have been taught that the marriage service is a divine institution, and on no account and for no reason ought there to be divorce. They have gone through the form of matrimony, and we are all familiar with the service where it says before God they make a compact for better or worse, that nothing can part them. To the people where I come from, and it is a typical parish, all over the country there are thousands of people like them in hundreds of parishes, and hundreds of priests teach the same thing, it is a serious thing: it is a thing which cannot possibly be broken except by death.

20,583. Your opinion would be to give no greater facilities than exist at present?—Quite so.

20,584. Would you leave things exactly as they are?—Not exactly. If I had my way I should repeal the Divorce Act.

20,585. Why?—Because to my mind it is absolutely wrong—divorce itself.

20,586. You would not agree with Mr. Watts Ditchfield, that it should be permitted for one ground?—I cannot possibly, I am sorry to say.

20,587. Where do you get the notion from that it is entirely prohibited?—From the marriage service itself. I myself said before a priest when I was married I would take my wife for better for worse, in sickness or in health, whatever came about. Nothing would part us except death.

20,588. Supposing she went off with another man to America?—I should be very sorry, but I should not want divorce.

20,589. You would leave it as it was?—Absolutely. When I stood there, as I was told I stood there, before God, I made a solemn compact, and I am ready to abide by whatever happens.

20,590. How would you treat those cases which have been married before the registrar?—In the same way; the compact is there.

20,591. With regard to publication, you are against that, I understand?—Yes. I feel it is injurious, but especially the Sunday papers. I have gone out of my way to prohibit some of the Sunday papers in families I am in connection with, because they seem to go out of their way to publish anything in the way of indecent details.

20,592. Have you come across cases which you think have been bad?—Yes, within my own knowledge. I am sure for a young man to read all these cases cannot be good.

20,593. With regard to the Separation Act, 1895, what is your view? Have you had any experience?—Not much personally, but our clergy have, and their opinion is that in most cases they come back together again.

20,594. (*Mr. Spender.*) We have had a great deal of evidence, and much of it from East London, saying there are a great many hard cases, and the people suffer from what some regard as a denial of justice. Do you think those cases do not exist?—No, I think it is possible they exist.

20,595. You would not meet them?—No, I could not possibly meet them.

20,596. Even if you thought them unjust or great hardships?—Quite so, on the ground that when they stand and make that compact it must be binding; if it is not binding, then do not say it.

20,597. Your evidence goes to that one fact; you would rather repeal the Divorce Act?—Yes.

20,598. (*Sir William Anson.*) The Divorce Act is there, and there is the law. Do you not think it desirable it should be the same for the rich and the poor?—I do not. Looking at the marriage tie from the point of view I do, and the point of view I have been taught, and am being taught, and I should not believe anything else if they taught me anything else about it, I cannot agree and think it right to part a couple after they have solemnly said nothing shall part them.

20,599. If the law allows those who can afford the money to get divorce, do you not think that the possibility should be brought within the reach of the poor as well as the rich?—I do not think so, on the ground I have stated, and also that the effect would be disastrous.

20,600. I am not suggesting that we should enlarge the grounds of divorce, but only that the same remedies should be available for the poor as the rich?—No, I do not think it should be. I cannot help thinking if they have the opportunity some would avail themselves of it, and we should have first of all that unholy restriction of the family more than we have now, and also tremendous opposition on the part of a large body of the clergy who hold the sanctity of the marriage tie.

20,601. What I have regarded as a remedy you regard as a disease, and you would rather it did not spread further. Divorce is available for the rich, but if poverty prevents it being available for the poor, you say so much the better?—The rich would not require divorce so much if they had not got those considerations to think about when they first meet one another, the consideration of status and wealth, which the poor have not. As soon as a poor man sees a young girl he thinks of nothing else but affection, whereas the rich man must not fall in love without first of all considering status and wealth, and the chances are before he has been married very long it is possible either his wife is not looking so fresh, through bearing children, or trying not to, as often happens, that he falls in love with somebody else, or the original person from whom he was barred on account of social considerations.

20,602. As regards separation orders do you think they have this advantage, that they bring the differences of married couples to a point, and reconciliation takes place?—I am sure it often happens. There is the old saying, "Absence makes the heart grow fonder." I know several cases.

20,603. (*The Archbishop of York.*) One of the reasons why you take your present view is that you feel that any extension of the grounds of divorce would be very

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[Continued.]

much resented by many of the clergy. Would it be shared by a large number of laymen?—Yes, I mean that, of course. There are thousands of laymen up and down the country—I am only a poor sample of them, if you like—that would resent it tremendously.

20,604. Would you feel it would be a very inaccurate description of the facts to say that this is a matter in which it was only the clergy who are interested?—That would be all wrong. There are thousands of laymen up and down the country who would resent any alteration, or greater facilities.

20,605. Would large numbers belong to the working classes you mix up with?—Very largely. I feel if you had had your Commission in the East End it would have been all over before now.

20,606. Do you think that the views you express are shared to any large extent by working men who are not strong members of any religious body such as the Church?—It is so.

20,607. You wish to convey to us that large numbers of working men who are not Churchmen feel strongly about the marriage tie being what the marriage service says for better or worse?—That is so, although they are not regular churchgoers, but irregular, still the marriage tie is a serious thing and a solemn compact and an institution of God, in spite of what has been said. You have had evidence from a police court missionary which upset Stepney very much. Stepney has about 300,000 souls in it, and for any man to say that this divine institution is not felt at all in Stepney has been very much resented. There are thousands of the Roman communion, apart from the Anglican branch, in Stepney who liked this view of the marriage tie. It is not for me to weigh the evidence, but on the face of it, it must be absurd.

20,608. You rather represent the good, steady, wage-earning population in what you say?—To a great extent, yes, but, as you have said, and there is a lot in it, people who do not go to church have that idea the same as the church people about the marriage tie to a great extent.

20,609. (*Lady Frances Balfour.*) You were giving your views about the rich with regard to marriage. Have you had much experience of that society?—Not very much.

20,610. You said that motives of affection had less to do with their marriages than motives of convenience and other things?—I think they would have more influence with the rich than the poor.

20,611. That was the expression of your opinion?—Yes.

20,612. Not your experience, I gather. Is your experience that the working classes marry for love, and the rich classes never marry for love?—I should not like to say that. What I meant to convey was this, that it is naturally, and should be, I suppose, of importance that the union of two people, two aristocrats, I will say, must be on the same social level.

20,613. That happens in every class?—As to the poor, there is no consideration there much.

20,614. There is the social level of the working class, whether the husband or wife will make a good home, the same as in any class. The conditions of a home may be different, but home is the same thing?—I may not know about the rich, but I must know something about the poor.

20,615. I was only asking you to give your opinion. I wanted to know your experience?—It is only an opinion, but as for the poor, I am certain they fall in love, and there is no question of status or wealth.

20,616. I think probably among the rich you will find the same thing?—Yes.

20,617. (*Sir Lewis Dibdin.*) I want to ask you about the people in Stepney. I am not sure you understood the evidence you were referring to of the police court missionary. There is a class not only in Stepney, but in most parts of London, called the submerged tenth, a class different from and below the respectable working class?—Yes.

20,618. Of that class it would be true to say the marriage tie means nothing?—To a certain extent it would, but the submerged tenth in Stepney is not a large proportion.

20,619. I am speaking from memory. My recollection is that the gentleman you speak of was alluding to that class?—I only got a newspaper report, and the local papers have taken it up, as they understood, as I did, the witness to say that in Stepney the divine institution idea did not exist.

20,620. That would be entirely incorrect?—Absolutely.

20,621. It would be correct to say there is a class in Stepney, as there is in other neighbourhoods, to whom the marriage tie means nothing?—Yes, but with regard to the police court missionary's evidence, it would be equally absurd if I said that everybody in Stepney held the view I did.

20,622. Do I gather the evidence before this Commission is exciting a good deal of interest in Stepney?—It is very great.

20,623. Is it talked about?—It is talked about at every church meeting.

20,624. Do you frequent meetings that are not church meetings?—Only secular meetings. I should not go to chapel.

20,625. Do you find, apart from church circles, this matter is exciting attention in Stepney?—Yes.

20,626. What is the view with regard to the demand for greater facilities for divorce?—I am in and out amongst them, and have never heard any demand for greater facilities.

20,627. You never hear of it?—No.

20,628. I ask, because I gather you are largely voicing church opinion there. What do you find among classes that are not church people and have nothing to do with church?—I mix up with them to a great extent in all ways, and I have not heard any demand for greater facilities for divorce.

20,629. In any class?—In any class.

20,630. Not lately, since the Commission has been sitting?—No.

20,631. Although the matter has been drawn to the attention of the public?—No.

20,632. Why do you think this inquiry would have been over long ago if we had sat at Stepney?—I mean you would get more East End evidence, more poor evidence, and it would be most emphatic.

20,633. We should have long ago been convinced no further facilities were necessary?—Certainly. You would have been convinced a long time ago there was no demand.

20,634. (*Judge Tindal Atkinson.*) Do you know any cases where the parties want a remedy where men have been guilty of adultery and cruelty to their wives?—I am sorry to say any amount of cases of both crimes you mention.

20,635. You have known that?—Yes, but no desire for divorce.

20,636. The injured parties in those cases do not want a divorce?—No.

20,637. Have you inquired?—I know the cases.

20,638. Take a particular case where a husband has treated his wife with gross cruelty, and has been guilty of adultery. Have you had any communication with the wife?—I have not asked the wife if she would like a divorce.

20,639. But she has not said she did not want one?—The case I am thinking about now is a very bad case, but in less than a day they were as right as ever they were.

20,640. In that case there was no desire to be divorced?—Not the slightest.

20,641. You have inquired into that case?—I happened to know the facts.

20,642. You say people marry for better or for worse. Do you put any limitation upon the "worse"?—None whatever.

20,643. Do you think the parties when they marry contemplate that gross cruelty and immorality are included in the "worse"?—I suppose nearly everybody contemplates perfect happiness.

20,644. Do you think they contemplate the possibility?—I did. I know that things cannot possibly run smooth in a long married life; I am sure of it; it does not run smoothly in hardly any case; something must happen.

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[Continued.]

20,645. (*Mr. Brierley.*) Do you mean you have never come across a case where either of the parties desired a divorce?—I do not remember a single case in all my life where I have heard people say that they wanted a divorce.

20,646. I do not suggest you do not know the working people well, but one may suggest that they do not come to you in matrimonial troubles?—I know of all their troubles.

20,647. We have had the evidence of Mr. Fitzsimmons, who has been a police court missionary for 20 years, and he says there are a very fair number of persons?—His evidence is police court evidence. It is for you to weigh it.

20,648. It is just possible he may be more the class of person to whom poor people would go when they are desirous of a remedy of this kind than they would to you?—I quite admit that. All I am stating are facts. For 50 years I have been in and out amongst them. That is a fact. There is no getting away from that.

20,649. One does not know what you mean by "being in and out amongst them." We are all in and out amongst poor people, and yet we may not be the persons to whom they come in their matrimonial difficulties?—We do not all live in the midst of them. I do, and have done all my life.

20,650. These church meetings, I suppose, are generally attended by respectable people, married wives who are living with their husbands, and husbands who are living with their wives?—They are all sorts.

20,651. As a rule, they are those people, except single people?—They are living together and will go on living together, but of course every now and again terrible things happen.

20,652. You do not get a great number of people attending these church meetings whom the shoe has pinched very much?—I should think a large majority of those people that come to the meetings I go to have found the shoe pinch very much indeed in all kinds of ways.

20,653. I have no doubt in many ways?—The majority of them.

20,654. Not, probably, through the infidelity of their husbands?—They would be the people who could bring forward evidence which, if you liked, if it was not

sin, would justify a divorce, but they do not want it; they grin and bear it.

20,655. (*The Archbishop of York.*) Would you wish us to consider from your evidence that these respectable wage-earning artizan folk of whom you are speaking, are citizens who feel that they are entitled to express an opinion upon any change of the law, and, apart from what they may have experienced, they are citizens, and have an interest in the matter?—Certainly. Those are the ones that I fairly represent.

20,656. You would not confine a right to speak in this matter to those who had been in matrimonial difficulties?—No.

20,657. You convey to us that there is a very large section of opinion in the working classes in the East End of London who are citizens and have strong opinions upon any changes in the law?—Quite so.

20,658. You are not speaking on behalf of the very poor, who naturally would come more within the reach of the police-court missionary?—No. His people would naturally not be same as those I represent.

20,659. (*Chairman.*) Do you convey, for the type of people for whom you are speaking, that you would leave the law as it stands, with no opportunity for the poor to get to the courts which the rich have?—I feel certain, if you could take a vote of the poor people, the the people you are considering chiefly with regard to this Commission, you would find that they require no alteration whatever. If there was any at all, it would be to repeal the Divorce Act as it is at present.

20,660. On religious grounds?—Certainly. That is a very large opinion up and down the country, I am sure. I am no exception, simply one in thousands.

20,661. That applies, according to your view, to those who only retain the Christian belief?—To a great extent. Those who are not religious look upon marriage very solemnly.

20,662. What church are you churchwarden of?—St. Peter's, London Docks.

20,663. Do you know who sent your name to the Commissioners?—I think it was the Archbishop.

20,664. (*The Archbishop of York.*) I know who Mr. Jones is very well, but I do not remember?—Your letter to me said that, I think.

(*Chairman.*) We must thank you very much for your evidence.

The Rev. WILLIAM FALKNER BAILY called and examined.

20,665. (*Chairman.*) Are you Vicar of Plumstead?—Yes.

20,666. How long have you been there?—Five years; before that I was at Cambridge House, our University Settlement in South London, and before that in the North of England.

20,667. Have you come across this question of divorce matters in the course of your experience?—I find moving in and out among my people one hears very little of it. It does not enter their minds or heads to speak about it, and one has not naturally spoken about it to them. I feel that the sexual problem we know of to a certain extent is an absolutely unknown topic with them. They live a quiet, steady life, and the question of divorce does not enter into their considerations.

20,668. Have you formed any view as to giving jurisdiction to courts in order to meet the difficulty which has been presented of expense?—Yes, one does feel that the poor are handicapped, if it is a benefit to have a divorce, in obtaining it, by expense.

20,669. What is your view, assuming this matter were dealt with by the Legislature, as to the constitution of a court for that purpose?—That is a large question. I should be sorry to see anything started that admitted of larger facilities for divorce.

20,670. What is in your mind?—I should be sorry to see any extension of divorce for the sake of the poor. I have what is rather a striking statement of Mr. Ramsay Macdonald, the labour member, who speaks about the poor man complaining because he is cut off from the facilities for drink the well-to-do have. In speaking to working men of democratic ideals he

says something which strikes me as being to the point:

"We must differentiate the rights that are of good report from the rights that are of evil report, and we say do not cling for five minutes to a right that is of no value. If the rich want to keep the road open to their own loss, that is their affair. No; democracy ought not to say, 'because one class has such and such a right all classes ought to claim the same right.' It is not worth it. Let us see to it that the rights the democracy claims, that the rights the working classes claim, are rights worth having, and not rights that come with disease and canker and vice in their train." It is an impression of another matter that I daresay would be borne out with regard to divorce.

20,671. Assuming these cases were dealt with, would you prefer to see them dealt with in the High Court?—I would prefer to see them dealt with in either the High Court, or else the assize courts, but not in the county court.

20,672. And that one standard should prevail?—Right through everything.

20,673. You say that the evils which the Divorce Act of 1857 aimed at correcting exist in all classes, but as at present administered the working classes cannot avail themselves of its provisions?—They cannot, whether it is good or bad I am not saying.

20,674. They cannot do it because of the expense?—No.

20,675. So long as the law of the land allows the dissolution of marriage for certain irregularities the working of the law should be universal in its application. That is the same problem?—Yes.

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[Continued.]

20,676. Then you proceed to say: At the same time any extended facilities for divorce must be facilities only for the purpose of a more equable administering of the existing law and not facilities in the interpretation of the law. Will you explain what you mean?—My own feelings with regard to divorce are that the need is not to lower the standard, but to raise the standard, and if any facilities are afforded they must be brought up to the raised standard all round.

20,677. Upon this particular point you mean it should be administered by the best court you can find?—Yes.

20,678. Then you add that there is a real danger lest the suggestion of increased facilities should carry with it a suggestion of a lowered standard?—Yes.

20,679. If the standard were lowered it would naturally follow that there would be a weakening of the regard in which marriage is held?—Quite.

20,680. Have you formed any definite view as to what causes there should be for divorce?—Yes. I hold very strongly with the view expressed this morning so forcibly, that is to say, adultery alone, and absolute equality between the sexes, I mean adultery the only necessity in both cases.

20,681. So that a woman should not be required to prove something in addition?—Yes.

20,682. Assuming that the law on that subject were made equal, do you think it would improve the standard of morality amongst the men?—I think it would, although I was astonished when I was away abroad the other day from speaking to a man in the train, to learn what a low standard does prevail with regard to men very often.

20,683. Do you come across the submerged tenth we have heard of?—To a certain extent, not in my present work, but in my past work I have, in my Cambridge House work and in the North of England. At present I do not deal so closely with them.

20,684. Would the view presented be correct, that that class has a very low standard of morality?—In the submerged tenth that is true.

20,685. Gradually improving as you get up?—Yes.

20,686. On what grounds would you allow adultery only to be the cause?—Because I believe that marriage is a condition of which adultery is the absolute violation. It is the great violation of all the spirit of what I regard as a sacrament.

20,687. Is not disappearing altogether, and leaving a wife for good, also a violation of that?—Yes, I think it is.

20,688. Will you tell us why?—One feels that one is absolutely an offence committed and done with, but the other may be possibly rectified.

20,689. While marriage lasts it seems a grave offence?—Yes, but I cannot tell how long it will last. There is always the possibility of returning.

20,690. Will you take those cases we have had of people going away to another country and forming other ties. In all probability there would be the difficulty of proof, but there would be the marriage possibly lasting for years?—I quite see the hardship of it, but it is not an absolute and impossible position that you cannot get out from.

20,691. Perhaps you cannot get out of it for years?—No, but the point is that before death comes you may.

20,692. Is that the only consideration?—No, I have the deep consideration that lies in the sense of the purity of marriage.

20,693. Does your view rest on any religious grounds?—Yes, mainly, I suppose, upon one's religious instinct, which revolts against it.

20,694. Do you take the Scriptures as laying down the rule that only one ground of divorce can be permitted?—I feel if I were to take the spirit of the Scriptures I should say that was so.

20,695. The next point is with regard to the question of publicity. You think that divorce cases should be heard as far as possible with closed doors?—Yes.

20,696. Then the sentence you continue with I should like you to explain?—"Many go into court for the publicity as an act of revenge." I set that down

from having spoken to a man who had worked among the poor; we were comparing notes together, and we were struck how often it came before us. People go into court so that the case may be dragged up and somebody's character wrecked.

20,697. Do you say it often comes before you?—It came before me often enough for me to comment upon it.

20,698. In what way do you mean?—I cannot tell you how many times numerically, but a substantial number of times.

20,699. What has led you to that conclusion?—By going into a home and hearing of trouble, and hearing of threats having been made to take the case into court.

20,700. Do you mean a divorce case?—No, this is with regard to a separation order.

20,701. You think that none but adults should be admitted. Of course you would not exclude those connected with the case?—No.

20,702. You would exclude the public altogether and only have present in the court those connected with the case?—I should admit of a *précis* being submitted to the press, giving the names of the principals, and also the co-respondent, and if thought fit, just a statement of anything that made the case stand out.

20,703. Who would you have to prepare that *précis*?—Is not there an official in court who could do that? Is not there a clerk who could submit a *précis*? Filthy cases are reported in our evening papers out of all proportion to their importance. There is no reason why a paper should have half a paragraph because it is a dirty case.

20,704. Have you met those cases in which it has produced a deleterious effect?—Yes, in our boys' clubs. Our men have told me of it, and in the Arsenal one hears a case which has been reported talked about among the boys—I mean in Woolwich Arsenal.

20,705. With regard to separation orders, have you any point to make?—No, except I should be glad to feel that we had something more consistent in the dealing out of separation orders—that there was more consistency in the method.

20,706. The method of administration?—Yes.

20,707. What evil have you found in the present system?—The great evils is that very often you find the people separate, and they regard a separation order as having the same value as a divorce. They regard themselves as free to marry again if they wish.

20,708. Do they do that?—They live together with other people.

20,709. As if they had been divorced?—Yes, the other thing is that they are so easy to get, as was said by Sir Edward Frazer, by young people who have not realised what marriage means, and when they cannot get on during their first years they want to get a separation.

20,710. Does your experience lead you to think that separation orders have led to immorality?—I should not like to say one way or the other with regard to that. It would be a generalising statement. They sometimes do.

20,711. You have some indication in your proof of that being so?—Yes, occasionally they do, but I should not like to say they—

20,712. Did so generally?—No.

20,713. As a solution, you say that they are unfair to men. Will you tell us why that is?—I daresay I was wrong in my law, but I found so many men wanted to get separated, and they have not been able to take up the process that the women can.

20,714. They can only take up a process where there is drunkenness?—Yes, that means you often get a man tied to a worthless woman and he cannot get relief.

20,715. You would make it equal on both sides?—Yes, if it is different.

20,716. You have a point further on in your proof that you desire to make recommendations with respect to the antecedents and precautions that bear on marriage, if we have power to make them?—Yes, as in Scotland, so in England, the names of the contracting

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[Continued.]

parties should be publicly advertised on a notice board outside each registry office, and not within the building.

20,717. The point there is that there should not be privacy, whatever steps are taken to ensure otherwise?—Yes, I had a case within this month of banns being published in my church, where if they had been placarded outside we should have found out that the man was wishful to contract bigamy. It was only just saved in time. If the names had been outside somebody who told me about it afterwards would have seen it. That is an instance which has happened since I sent in my proof.

20,718. You suggest that there should be compulsory notification of venereal disease?—I would suggest that, but I was speaking to a medical officer of health, and he told me that was practically impossible as a practical measure.

20,719. In your last paragraph you have a suggestion about notifying marriages?—Yes. So many separation orders arise from the early difficulties that accompany a young married couple. The difficulties are practical ones, want of knowledge of motherhood, and so on. If you can make it easier the first months of their married life, I think something might be done.

20,720. The point is that there should be some form of public notification which is more effective than at present, and some more necessary step to bring home to them what they are doing when they marry?—Yes.

20,721. Have you any practical suggestion to make?—Only what I say, that in connection with many borough councils, which are the public health authorities, there is a lady visitor who has to see into the question of infant life and the subject of motherhood in the place, and she might very well be notified of every marriage, and follow it up.

20,722. So as to give more information?—Yes.

20,723. (*Mr. Spender.*) While admitting the evils of publicity in the Divorce Court, do not you see dangers in sealing up the Divorce Court, suspicions which might come as to its fairness if there was no public criterion by which it could be judged?—I see there is that difficulty, but I do not think the evil on that side would be anything as compared with the positive evil of to-day.

20,724. We have always had a prejudice against secret justice?—I know we have.

20,725. Apart from the question of the publication of reports, you make drastic suggestions for preventing the public attending the courts?—Yes.

20,726. That is contrary to our general principles of administering justice; we regard the accessibility of courts of justice as very important, and in one aspect of it a divorce court is a court of justice. Have you considered the possible evils of establishing the rule of secrecy, because it would be secrecy, and whether there might not be suspicions and doubts as to the impartiality of the court and rumours as to what had happened?—When you look at the people who attend the Divorce Court and the people who attend an ordinary case, say in a Court of Chancery, the people who attend the Divorce Court are there for the most part to hear something that is prurient; the other people are there because of interest in the case. I cannot run away from the fact that, as you say, the want of publicity is dangerous.

20,727. Are you fair in taking the Court of Chancery as a parallel case. After all, there are many other courts, there are criminal courts and police courts, all of which have the same objections very often attaching to them as to the class of case which we are considering. I suggest to you your rule of closing the court might apply on the same ground to a vast number of other cases?—Yes, I think it is the case. I forget whose evidence it came in, but someone said that is done in Germany.

20,728. (*Chairman.*) There are powers?—You have powers of asking that the case should be tried *in camera*.

(*Mr. Spender.*) It is within the competence of the judge, is it not, to say that the case shall be heard *in camera* at any given stage?

20,729. (*Chairman.*) Only on the ground of indecency, and even that is a doubtful point?—That

will come at a point when the damage has been done as a rule.

20,730. (*Mr. Spender.*) Then you speak of the presence of women in the court, and use a strong expression about it. Assuming the courts are to be open, do you think it would be fair to draw a distinction between one sex and the other, when both sexes are interested in the case; one is a man and one is a woman?—I did that from the ordinary instinct of a man who wants to spare womanhood as much as possible from what one feels is so untrue to her womanhood.

20,731. Do not you consider that a woman whose case is being tried would be under a special disadvantage if the public in court were confined to one sex? Might it not make it more formidable to her?—I should not think so personally, but it is so difficult to say. I do not think women as a rule are as merciful to women as men are, and she would feel that. I think the absence of women from the court would be a thing she would thank God for.

20,732. Do not you think the presence of women would admit of her friends being present. Perhaps you would not exclude them?—I should not exclude a personal friend whose presence was felt to be necessary.

20,733. Then you immediately get into the question of who shall be excluded?—Yes.

20,734. With regard to publication, you are against it altogether?—I am against any publication excepting such as may be useful for the purpose of a deterrent, and that would be served by recording the names of the parties and the name of the co-respondent.

20,735. Have you thought of the case of an innocent co-respondent whose character may be at stake in the proceedings; do you not think he might consider it important?—I am speaking of the definite conclusions, and I suppose if you consent to have conclusions you would not put in the names of an innocent co-respondent. He is not connected with the judgment of the court if he is acquitted.

20,736. You would simply blot out his name?—He is blotted out of the case by the effect of the judgment of the court.

20,737. Cannot you imagine cases that would not be satisfactory where a name had been mentioned, say of a public man or a clergyman, who had been an innocent party, but had been involved in the case. Might not he consider it important that his version should be heard, and his cross-examination read by other people, if he wished his character to be thoroughly cleared. Do you not think that public justice demands something in that case?—I should have thought there would have been other means than the publication of the divorce case for the man to clear himself.

20,738. Supposing a man has been involved in a mesh of gossip and suspicion?—I should think the mere statement in the *précis* of the case would be sufficient.

20,739. You are thinking of the *précis* of the case?—Yes, I think I did leave room for a *précis*.

20,740. (*Chairman.*) I think you said so to-day?—In that there would be room for the clearing of a man's character.

20,741. (*Mr. Spender.*) You would not allow any party to claim as a right that he or she should be heard in public?—No.

20,742. With regard to the very interesting passage you read from Mr. Ramsay Macdonald's speech, the gist of which was, because the richer class had liberties, or facilities, we will say for drink or self-indulgence, that therefore the poorer classes should not think that equality required them to have the same privilege; that they should aim at all events at something better, and that if the other classes chose to give themselves these indulgences the working classes should not envy them. You would not say there was any parallel between that and the case of facilities for divorce. You do not regard it as self-indulgence?—No, only as far as they were parallel.

20,743. You do not suggest that Mr. Macdonald would have applied that?—No, I hope I did not convey that. ••

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20,744. It would depend on the ultimate view you took?—Yes, quite.

20,745. I was not clear whether you ruled desertion out as a possible cause for divorce?—I should feel if you added desertion it leaves the loophole for bringing in other causes. That is why I want to stand on adultery alone as the cause.

20,746. It is rather a different ground from what has been presented to us by other witnesses. You would take it, not as absolutely wrong, *per se*, but your fear would be that it would extend the grounds?—Yes.

20,747. (*Earl of Derby*.) A previous witness informed us that he was opposed to any marriage between guilty parties. Would you agree with that?—Yes, for this reason. I know the hardship of it, but if you are going to keep a high standard somebody must suffer somewhere. I know how easy it is to quote cases of individual hardship, but when those have been quoted fully you feel that you are still faced with the fact that this must happen if you are going to keep your standard high. I see the tremendous hardship of it all; I may be quite wrong, but it is only principle.

20,748. (*The Archbishop of York*.) Do you mean in your evidence you think all matrimonial causes should be heard with closed doors, or only applications for separation orders?—All matrimonial causes.

20,749. Do you include applications for separation orders in the police courts?—I am afraid I have not taken thought of it. It did not occur to me, because they do not bring in the same details. They are largely battery, assault, and cruelty.

20,750. Would you be in favour of hearing them under special conditions, say a special day?—Certainly, I should like to feel that all the cases dealing with the matrimonial differences were heard under special conditions, and put upon a plane by themselves.

20,751. With regard to the presence of persons in the High Court or any divorce court, you have heard the points about the English dislike for closed doors and secret justice. Considering the very small number who at present are able to obtain admission into the High Court, do you think that small number represents a great deal of general corruption?—There is such competition among that small number to get in.

20,752. But are not they already the pruriently minded. Perhaps I should use a stronger adjective, and say, are not they already beastly prurient?—I agree, but I am stronger upon the question of publication than the court.

20,753. I suggest that it is not worth while to lay much emphasis on what they hear in court, from the kind of people who go?—I should not lay so much stress on that as the other.

20,754. No clean-minded person would go to the court and hear that kind of thing, therefore they are not likely to get much corrupted; on the other hand, their presence ensures the principle of open justice?—Yes.

20,755. Do you press that point of excluding the public?—I should like to see the public excluded. I should not, however, make such a point of it as I do on the question of publication. That is where the damage comes.

20,756. Your last suggestion was that all marriages should be notified to the lady visitor. Do you mean compulsorily notified?—I think so.

20,757. Do you mean all marriages?—When I say all marriages, I mean all marriages, because the lady visitor need not visit.

20,758. That would mean that there must not be one law for the rich and one for the poor?—No.

20,759. You would make the ladies of Mayfair certify?—Certainly, in this way, which would be simple, if the authority in the church were merely to send her the name, not the people themselves, but notify her of marriages that were going to take place.

20,760. Would it be an advantage in the upper classes that brides should be instructed?—I do not think the lady visitor would call. She would use her judgment. Just as the sanitary inspectors do not

visit your house; they visit the house of my people, although they have the right to visit yours.

20,761. Do not you think the ignorance is as great in the one case as in the other?—Yes, I wish Mayfair would only entertain her now and again.

20,762. Still, I wanted you to make your meaning clear?—Yes.

20,763. (*Lady Frances Balfour*.) You have been questioned upon the point of admitting females into the Divorce Court, because the public means men and women?—Yes.

20,764. Do not you feel that women of an adult age have a right to their opinion, whether they should be there as much as men?—Yes.

20,765. How can you recommend that they should be prohibited from coming into a court which is open to the public?—I agree that there is a strong feeling against what I say, but it arises from my extreme respect for womanhood. I may be wrong.

20,766. It is one of those cases of the men settling what is good for the women?—I daresay that is the way to put it.

20,767. Men think women do not know what is good for themselves?—I stick to what I say.

20,768. You do not press the point. If the public are admitted, and a woman chooses to go, she has a right to?—She has a right to go in, certainly.

20,769. (*Lord Guthrie*.) If the public are admitted, you would like to have some discretion as to age, that no young girls and no young boys, young lads and young women, should be admitted?—Certainly.

20,770. There would be no difficulty in carrying that out?—I should not think so.

20,771. With regard to what you said about adultery alone, would you think it right to enlarge the scope of that term to include offences against decency and lewd practices with young girls?—I think I should. I feel you have touched a point; that touches adultery so close that it is almost the same.

20,772. Although not technically adultery?—Although not technically, adultery, it is an offence against the spirit.

20,773. In regard to the Scriptural view, did I understand you to regard marriage as a sacrament?—I do.

20,774. In a sense?—Yes.

20,775. The 25th Article says that it is not a sacrament?—You modify it just as I should, by saying "in a sense."

20,776. In what sense, if not in the Roman Catholic sense?—That is a deep theological question.

20,777. Is it a sense that would only apply to marriages between Christians, or would it apply to all marriages in England now?—That opens out the big question that one has felt all through the matter. When one is dealing with marriage in England it is with something that has two different characters, one that of a civil contract and the other that of a spiritual union.

20,778. May I add to that, whether you assent or not I do not know, that you have to consider different sets of people, to some of whom it is a sacrament in one sense or another, others to whom it is not, and therefore the question for the State may be different from the question for, say, the Church of England?—I feel that there is a great deal in that, and in thinking over the evidence I have had to remember that largely.

20,779. Do you see any objection to a Statute applicable to the people allowing, let us say, divorce for desertion, and leaving each church and the members of that church free to deal with the matter, and to be dealt with according to their own conscientious convictions?—What authority has the Church to deal with the matter? How can it make its influence felt?

20,780. I am assuming that the Church is left free to deal with it as it chooses. Supposing a Statute was passed leaving the different churches free to deal with the matter as they liked, do you see any reason why those persons who conscientiously think that divorce for desertion is in accordance with Scripture, and is for the public good, should not be allowed to have it?—That is a very big question.

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20,781. I am assuming safeguards, and that each church is left to deal with its members?—The Church cannot do it, I am afraid.

20,782. But if the Statute says so?—It cannot do it, in this way, it cannot separate the civil life of the person from the spiritual in the sense that the inheritance of children and the legal rights of the children go with the marriage. The Church cannot deal with that.

20,783. That is the civil aspect. As far as the Church privileges are concerned, if the State leaves the Church free as far as the action of the clergy is concerned, the Statute could preserve them. Supposing that were done?—That is the illogical position of the present condition of things. Whilst marriage is a civil contract and a spiritual union you must deal with it as such, and there are some people who engage in matrimony without any idea of it being anything but a civil contract, so that they have the right to say they shall be judged only as people who have performed a civil contract.

20,784. That would be subject to this, every person in the State is entitled to say that a certain cause is against public policy and must be prohibited?—Quite.

20,785. I am assuming that it is a cause which is not thought to be against public policy, but is objected to by a large number of persons on scriptural grounds only. Is there any reason why the others, who think it is in accordance with Scripture, and those who, apart from Scripture, think that it is a question only of public policy, should not have their remedy?—I suppose logically they have a right to it.

20,786. When the Act of 1857 was passed the same argument was used as you are using now. It was said, if you allow it for adultery alone they will say, "How can you stop at adultery, why not desertion?" It has been allowed for adultery. Do you not think desertion is as complete a breach of contract, from the civil point of view, as can be ordinarily assumed from the two main elements of fidelity and adherence? Adultery is the breach of fidelity; desertion is the breach of adherence. Apart from the scriptural argument—it is difficult to take one's mind off it—do you see from the point of view of public policy any objection to a real case of malicious desertion, not only going away, but the man intimating that he repudiates for life any relation to his wife and children and leaves her to maintain them, never corresponds with them or sends them a penny?—I see your point. You say from the point of view of public policy, but I should use the term public expediency. From that point of view I can see it may be essential. From the point of view of the standard it would be fatal. Expediency gets across what I feel to be the principle of the matter. If it is a question of expediency or principle, I should stick to principle.

20,787. Do you think that there is a difference in principle between adultery and desertion?—Yes. Infidelity and adultery strike at the root of marriage. Desertion is something I do not feel as beyond at any time rounding off, and breaking off.

20,788. Adultery is a thing once done which can never be undone?—True.

20,789. Have you not known cases of desertion where it was certain that the man had gone for ever?—I do not want to be dogmatic, but I am afraid I never have, the doctrine of probabilities comes in.

20,790. I want your experience?—I have not known it, I say that honestly.

20,791. In regard to the scriptural view, is it your view that the words, "save for fornication" in the Gospel according to St. Matthew make any difference in a question of divorce or are limited to separation?—Make any difference?

20,792. Do they authorise true divorce *a vinculo* in a proved case of adultery?—Do you mean from the bond?

20,793. From the bond?—I am speaking now from my own point of view purely and simply, if there is one cause that warrants divorce, it is adultery, and if there is one passage that warrants you in believing that, it is the passage you are quoting.

20,794. Do you think the scriptural question is a very difficult one?—I think all duty is difficult, and that is particularly difficult, but still I think it is the standard.

20,795. Is not the special difficulty shown by this, that you have had down the ages equally competent people, equally learned, equally pious, equally interested in the public welfare, giving totally different views in regard to the meaning of Christ's injunction?—Yes, I daresay it is so.

20,796. You find that so still?—Quite.

20,797. In the Church of England itself as well as in the other churches?—I think, with due deference to the Archbishop, I should say so.

20,798. I notice a singular absence in your proof, and in that of many others, of any reference to children and their interests. I am sure that it is not because you do not take a profound interest in them. It is a very important point. In this question of divorce, are not the interests of the children the paramount and primary consideration and not the spouses' interests?—I think there is a great deal in that.

20,799. The absence of reference to the children's interests is a curious thing?—I am sorry I did not put that in my proof.

20,800. Is not it this, naturally one comes in contact and is somewhat obsessed by the interests of the spouses sometimes?—Yes.

20,801. Do not you think there are cases where two interests may pull different ways?—It is only fair to say I was writing a paper on this at the same time as I wrote my proof, and I said that my one reason for feeling there was any reason for divorce was based on the children, because the presence of the evils that are dealt with by divorce in the home are such dreadful things for the children to see.

20,802. You may have cases where one spouse finds the other spouse is ruining the children, and his or her continuance in the union will mean the wreck of the family?—Yes. I am speaking in rather a bigoted way, but that is the reason why I feel there should be the possibility of divorce.

20,803. (*Sir Lewis Dribdin.*) Lord Guthrie has put the suggestion that the law might be changed in its civil aspect while leaving the Churches free to take their own view?—Yes.

20,804. Let us deal with that precisely with regard to the Church of England. At present something like 70 per cent. of the marriages take place in churches?—I accept those figures.

20,805. It is somewhere about that. You may take it something like 70 per cent, take place with Church service. Therefore the first question that would arise would be, if divorce with remarriage was allowed for desertion, whether the Church of England was to continue to be bound to celebrate marriages of people living in the parishes of the different incumbents?—Yes.

20,806. That could only be solved in one way if the Church was to be left to itself, that the law would have to be altered, and marriages would not as a matter of necessity take place in church?—I suppose that would be the case.

20,807. The Church is not left free if it is bound to celebrate marriages of which it disapproves?—It certainly takes away the Church's freedom.

20,808. I suppose it would not be possible to leave it to the caprice of every incumbent as to whether he would perform such a marriage or not. There must be some general rule one way or the other?—When one comes to think of it one has to remember that the incumbent is human and pressure can be brought upon him. I am not speaking disparagingly of the possibilities of incumbents, but I feel that there ought to be a rule.

20,809. That would mean the abolition of the marrying powers of the Church of England as legal powers?—As legal powers.

20,810. It would mean universal civil marriage with the religious service added voluntarily where the parties and the Church agreed?—It works back to that.

20,811. The other modification would have to be as to the terms of communion. Take a person divorced

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for desertion who has remarried; the question would arise whether those persons ought to be admitted to Holy Communion or excommunicated?—Yes.

20,812. If the Church is to be left free, that would mean that the Church would have it in its option to refuse such persons Communion as persons living in a state which the Church did not recognise as marriage?—Yes.

20,813. That would be a large modification of the present conditions of Church and State?—You mean leaving to the parish priest the power to refuse communion.

20,814. Leaving to the authorities of the Church the power to refuse Communion to persons who by the law of the land are married. That would be a serious point?—I see what you mean, but I should feel, under the present conditions, that a parish priest would do it at his peril.

20,815. Refuse them?—Yes.

20,816. But if the Church is to be left free it ought not to be at his peril, not to incur a liability for doing that which is an exercise of the Church's freedom. I am assuming that he is acting in accordance with the views of the Church?—We are coming back to Lord Guthrie's position, that there should be a statute giving powers to the Church to legislate on those matters with regard to its own officers.

20,817. I am trying to define, more accurately and in detail than Lord Guthrie, the effect of the State liberating the Church on this question of divorce. I suggest to you that it means a very far-reaching modification of the relations of State and Church altogether?—It does.

20,818. That may be a wise thing to do. I will go a step further. Do you think that the union of Church and State could continue under those modifications. In other words, does not this mean that there must be disestablishment? Again, it may be a right thing, but I am trying the position. Can you imagine an established church going on where it is in the power of the Church to excommunicate persons on the ground of their marriage, whom the State has said are legally married?—It would provoke such a split between Church and State that the Church would stand out for one thing and the State for another. The two could not go together.

20,819. I suggest to you that would be so?—And it would provoke a state of things corresponding to the state of things in France to-day.

20,820. I want you to consider whether the state of things would not be one which would be incompatible with the Established Church?—I think difficulties would arise and would be so great that the only solution might be disestablishment.

20,821. I am not asking you to express an opinion whether that is a good or a bad thing. That is to define the position?—No, I am not going to do so.

20,822. You are in favour of divorce for adultery at any rate to this extent; you think that, if anything, is a due cause for divorce?—Yes.

20,823. And that only?—And that only.

20,824. You make that your principle, that that is a variation, a breach of the very basis of the marriage state?—Yes, if there is such a thing as marriage life it seems a contradiction of the life; it seems to be the death of all that marriage means.

20,825. You distinguish that from other breaches of the marriage contract on that ground?—Yes.

20,826. It has been suggested to you that desertion is a breach of the marriage contract. You would admit that it was?—It is an offence against it, I admit.

20,827. It is not every breach of a contract that undoes the contract?—I should not have thought so.

20,828. Take this particular contract. It is one of the fundamental parts of the contract that the parties love one another?—That is the promise made.

20,829. It is part of the marriage vow and I suppose it is fundamental in marriage?—Yes.

20,830. Supposing the parties have definitely come to the conclusion and shown it by their acts that they have entirely ceased to love one another—that would be a breach of the marriage contract?—Yes. ○ ○

20,831. If you were to allow divorce for that, would not you have arrived at divorce by mutual consent?—If you allow divorce for that you have got to that point.

20,832. Of divorce by mutual consent?—Yes.

20,833. We have had witnesses who have boldly faced the situation and said that they were in favour of that. Unless you get that far it is impossible to be logical?—Quite so. Have you had any witnesses who have brought forward the case of Switzerland.

20,834. (Chairman.) We have had Switzerland?—I mean the separation for 12 months by mutual consent.

(Chairman.) Yes, we have had all that.

20,835. (Sir Lewis Dibdin.) You have been asked as to the great divergence of interpretation of the New Testament teaching on this matter, the passages out of St. Matthew, and so on. Does that difference of opinion go beyond this, that there is one school which allows divorce for the one cause of fornication or adultery, and another school which says our Lord did not allow divorce for any reason at all. Is there any real divergence of view between scholars over that?—I think the two main schools are the two schools you speak of, and it turns so largely on the question of merely textual criticism.

20,836. I want to emphasise whether the difference in view goes beyond the law as it is now, whether it is not really between divorce for adultery or no divorce?—I think that is so. There is a third school; it is a question of whether the offence is pre-nuptial or post-nuptial. Otherwise I do not think you will find anything.

20,837. The advocates of desertion as a ground for divorce, perhaps North of the Tweed, are not primarily biblical experts of construction, but more ecclesiastical statesmen?—I should think that might be so, but I never criticise North of the Tweed.

20,838. That is a very safe rule—

20,839. (Judge Tindal Atkinson.) Assuming that the High Court cannot be reached, which is the best court that can be reached? Do you think the poorer classes should be without a remedy?—If the poorer classes are to have a remedy it can be supplied most likely by the courts of assize, but I have not the technical knowledge to know what the expense might be compared with the High Court.

20,840. It may be that would be able to be obtained?—Yes.

20,841. It may be, it will not, owing to the expense, and it leaves the parties to the county court, and the police court, and the county benches?—

(Chairman.) Is it worth while pursuing that question with this witness?

20,842. (Judge Tindal Atkinson.) I want to ascertain from this gentleman whether he would keep the poorer classes from any relief at all if they are driven into the county court?—I see the point.

20,843. Supposing that the only relief lies in the county court and they are driven there, would you consider that was such a mischief to the State that you would not give the county court jurisdiction, and would leave them without any remedy?—I think I should at present. I am speaking with great diffidence for this reason: I should feel amplifying opportunities to such an extent would make the thought of divorce so common in people's minds that we should be lowering the standard all round.

20,844. You would leave it as it is now?—Yes.

20,845. (Mr. Brierley.) You said the only question between scholars was as to whether divorce should be granted for adultery alone or not granted at all. Do you mean that is the case amongst scholars now or at all times?—I am speaking of biblical scholars. Sir Lewis Dibdin was taking me through my paces on a certain passage in St. Matthew's Gospel.

20,846. Do you mean that it is the case now, or that it has always been the case, that scholars have only differed between those two particular matters, whether there should be divorce on the ground of adultery or no divorce at all?—I think I should stick to what I said before.

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20,847. What was that?—That there were only two main views in the minds of scholars—only two alternatives.

20,848. At the present day?—Yes. I may be wrong.

20,849. There was a large school in the Reformation period. You would hardly deny that Erasmus was a scholar?—I should think not.

20,850. He did not confine the question as between adultery alone and no divorce at all. He wrote largely in favour of divorce on other grounds?—I am merely taking the specific text.

20,851. I was wondering whether you were referring to the past or the present time when you said that there were no scholars taking a third view?—Do you mean as regards the main question or the interpretation of that passage?

20,852. Their view of the Scriptural allowance of divorce.

20,853. (Chairman.) Supplementing what Mr. Brierley has put to you, have you studied the writings of the great Reformers on this question. There are half a dozen who take a different view from what you

are suggesting?—I am afraid I could not say that I have read them, if I may use the word, exhaustively.

(Sir Lewis Dibdin.) May I ask the witness with regard to the Reformation critics, have you read them?

(Chairman.) He says not. That is why I dropped it.

(Sir Lewis Dibdin.) I should not say that they put it on biblical criticism.

20,854. (Chairman.) You have not studied it?—No, I would never say I have studied it. I know the position of Luther to a certain extent. I am merely on the grounds of biblical criticism.

20,855. Do you know how many different interpretations are placed by great scholars on this question? If you do not, will you say so?—Are you speaking about this specific passage quoted by Sir Lewis or the general question.

20,856. The Scriptural construction of the question of what divorce is allowed for?—I have not studied it.

20,857. If you have, I will follow it up; but if you have not, I will not trouble about it?—I have not.

(Chairman.) I must thank you very much for the evidence you have given.

Mr. HENRY GOLDSTONE called and examined.

20,858. What is your position?—I have been a police court missionary in Liverpool since 1892.

20,859. I will take you shortly. You have been supplied with the questions which have been put to the other missionaries, and we have had your answers to them. Most of us have read them, and I will put the answers shortly. Will you take the questions? They have all been read and we know what they say, so that I will just take your answers?—Yes.

20,860. First of all with regard to the question of facility, as to whether there is any demand for greater facilities among the poor you say: No. Amongst the lower middle classes you also say: No. Does that mean that you have not come across any demand?—In my experience amongst the people I work amongst I have found very little or any desire to alter the law. Many of them would know that were divorce granted it would mean starvation for the wife and children.

20,861. Have you met no case in which divorce might be desirable?—I would not say that. I think there are one or two, but I think they go to prove the rule.

20,862. To what extent has the question of expense of divorce proceedings led to unlawful connections? That is the next question, and you say that you do not think it has led to any?—It is not so in my experience. I have known about 20 years about this in all, but it is very rare.

20,863. In answer to the next question: Does the fact that divorce is not allowed on the ground of desertion only, or on the ground of the husband's adultery only, lead in your opinion to unlawful connections being formed by persons who, if the law allowed divorces to be granted on these grounds, would be entitled to claim divorce? You say no, with the exception of six cases?—Yes. That is ranging over 20 years.

20,864. You were asked whether the law if altered would lead to a loosening sense of the binding character of the marriage tie, and you say: Yes, it would have the effect of loosening the respect and sanctity of the marriage tie?—I feel that because of the sanctity in which the class of people whom I work with hold the tie.

20,865. Are you speaking of the lowest?—The lowest and the lower middle classes.

20,866. We have heard a different account of the two. The lowest of all it has been said—I do not know whether you agree—have little regard for morality?—I do not find that in Liverpool. There are exceptional cases where immorality is unfortunately the order of the day, but a large number of them hold the marriage tie in sanctity. We have a cosmopolitan class in Liverpool.

20,867. You do not come across any cases of adultery?—I do not say that. I do, but not to such an extent as to lead one to suggest an alteration of the law.

20,868. Do you come across any cases of desertion?—Many cases.

20,869. Any in which the partner has gone abroad?—Yes. We are placed in an awkward position. A woman may show she has been deserted by her husband because she has not seen him for a period. We make inquiries at the Board of Trade and find that he has taken a pier-head jump; got a vessel on the spur of the moment, and sailed away and he is not able to write for a considerable time, but he comes back after a voyage of three or four months and joins his wife.

20,870. I was thinking of desertion which had lasted for years?—I have known in such cases going to the colonies in that way.

20,871. What happened to the person who has been left behind?—As a rule she has maintained herself. She has earned a fair competency for herself and her children. In other cases they have gone to the work-house.

20,872. Do you think those were cases in which divorce might be granted on the application of the parties?—Broadly speaking, no, but if it is found that a man never intends to come back you might prove sufficient desertion which would cause the court to take the matter in hand.

20,873. Further, you do not think that morality would be promoted or maintained by cheapening divorce proceedings?—I do not think it would.

20,874. Would you leave matters as they stand or bring the opportunities at present afforded to the rich within the reach of the poor?—I would bring the opportunities more within reach of the people, either by a circuit judge or a judge from the divorce court travelling on circuit in the ordinary way.

20,875. As to separation orders will you read your answer and explain exactly what you mean?—In my experience the present system of separation orders made by magistrates works very satisfactorily. Few of the separations last more than six months, and if divorce were granted they would probably resume cohabitation, as they do now, without going through the marriage ceremony, and thereby bring illegitimate offspring into the world.

20,876. You say in your proof that it works satisfactorily except in the case of desertion?—It has been altered now. Up to then the reading of the law was that a woman could not get a summons for desertion until she had been deserted by her husband for one month or he had been away one month. The magistrate held that he might come back after a period of a week

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or two and no desertion had taken place. It was a hardship because during that month a woman was driven to seek assistance from the parish or myself. She would ask the court for advice and be handed over to me to maintain her till the month had elapsed, and it seemed wrong that an agency such as I represent should have to maintain the woman for a month till she could get a summons for desertion.

20,877. The suggestion would be in the case of desertion that an order for maintenance should be made at once?—Yes. Last year in Liverpool there were 755 applications for summonses, but only 388 of those came for trial. The larger number of those that did not come for trial were handed over to me to make inquiries. I may be wrong in thinking that it would be desirable for this Commission to consider whether you should attach such an agency as I represent to take over the cases from the magistrate at his request, or at the request of the bench, and make inquiries in the homes and see if a reconciliation could be brought about, or whether there was a chance of bringing them together, or if not if there was sufficient evidence the magistrate should grant the order. My experience, more especially since 1895, but previously from 1892, has been that I have been able to bring together in one way or another 75 per cent. There has been no separation. The summonses have been withdrawn, or if not issued there has been no application other than the original one when they were handed over to me. Whilst 338 of the 755 came for trial, only 303 orders were granted last year. I say from experience now and past experience that 75 per cent. of those where the order has been granted resumed cohabitation.

20,878. What has happened to the rest upon that?—They have drifted apart in this way. The men go to sea. I am speaking of Liverpool generally. The women will go into service. If they are young people, as many are, they will seek employment in the cafés and restaurants as waiters, and if there are children they ask us to take charge of the children, for which they pay some sum. On that point, again, I hardly know the word for it, but callousness exists with some people as to entering the marriage tie without due consideration. If I may speak of my experience we have in Liverpool a special court for matrimonial cases. Every Wednesday there is a special bench appointed by rota which tries matrimonial cases.

20,879. Is that before the stipendiary?—No; it is before the lay magistrates. There are three magistrates. Last week there were 18 down on the list. There were three cases. One had been married nine months, the other ten months, and the other fifteen months, and they came asking for separations for stupid things. The cases were adjourned for me to inquire into and report at the expiration of the adjournment. Recently, arising out of that, some months ago a wife had summoned a man for desertion, and he told me a story which I found to be true. He had deserted his wife because he could not bear his mother-in-law, for this reason. The mother-in-law had lent him a sum of money with which to marry, and he expected she would take that back in the ordinary way of amounts payable weekly, but she was a money lender and insisted on not only the capital being paid, but an enormous rate of interest, which worked out to 850 per cent. He had been paying interest for the money for months, and yet there remained a debt of 18l. on the original 10l. borrowed. He said he could not stand this nagging way by the mother-in-law, and would not live with his wife any longer, and that was the reason he left, and she summoned him for desertion. The court did not make an order, but it points to the stupid and headstrong way they run into matrimonial alliances and how stupidly many of them run to break them.

20,880. How would you remedy the running in?—It would be a difficult thing to remedy. I think the Church and civil agencies as well should have power. I should be going too far perhaps, but I think some agency ought to have power to see what the income of an individual was before he was allowed to marry; whether he could maintain a wife. In this case the man borrowed money from the mother-in-law or the woman who was afterwards the mother-in-law, to get

married, who was a money lender, and there was this trouble.

20,881. In answer to the next question as to whether you have found adultery coming into the question of separation at all, what have you to say?—Do you mean before the application?

20,882. Before or after?—Before the application it is very rare. Had there been adultery, I think either party would have used it to strengthen his or her case. On very rare occasions has it happened. Little takes place from this fact. The average number of orders discharged for immorality on the part of the wife works out at five per year. If it takes place the husband would be the first to find it out. A large number of these orders are made payable through me, and I am able to get in close touch with these people, and to know more or less their mode of life. On the other hand, in connection with our night charge court last year, I believe the actual number of women charged with soliciting prostitution was 1,235. About 3 per cent. of these, who are known prostitutes whom I know as such, are separated wives from their husbands. I think I am right in saying half of that 3 per cent. are those who have been separated in recent years on the ground of being habitual drunkards. I think that is a small percentage of the number who last year were charged with that offence, and the 3 per cent. are known as separated women.

20,883. That is on the side of the women. What have you known on the side of the men?—That is harder to arrive at. We have had very few cases where the men have been separated from their wives and been charged with indecent conduct in the street with females. There are not many cases.

20,884. You have not come across what their mode of living is?—Their home life is consistent with that of men separated from their wives. Every instance I cannot follow, but the large number who have paid through me or whom I have taken an interest in I have found fair as working men.

20,885. What is the 40 per cent. during the last 16 years which you refer to?—40 per cent. is a mis-quotation. I do not intend to convey that 40 per cent. have gone back to adultery.

20,886. What does it relate to?—The 40 per cent.

20,887. If it is wrong we will pass on?—I do not remember.

20,888. The next question is: In what proportion of cases of applications for separation orders which have come under your notice has the application been withdrawn or no order made in consequence of a reconciliation having been effected? You say about 30 per cent. ?—I should strengthen that to 50.

20,889. After the separation order?—And after the separation order 75 per cent. have resumed cohabitation.

20,890. Not 40 per cent.?—I can strengthen that to 75.

20,891. In what way?—Since the Commission has been sitting I have seen evidence to the reverse of what I had intended to give, and I have gone over my books and have strengthened it for that reason.

20,892. Do you mean a re-checking of the figures?—Yes, and by personal visitation.

20,893. It seems a large error?—The first quotation was taken from the books, and I put it rather above the score. The second has been personal visitation.

20,894. In answer to the next question you say: "No figures; difficult to obtain." Then you say, in answer to the next question, persistent cruelty, desertion, and habitual drunkenness, but the latter are very few. Then you think that the county courts would not be a better tribunal than the police court?—No.

20,895. Lastly, with regard to the question of newspaper reports, do you think that they exercise a corrupting influence or not?—It all depends on the paper. Reputable papers in our city do not print stuff that would be detrimental. We have one miserable rag, a monthly journal, that lives on the garbage of the police court, and one would be glad to see it destroyed. As far as the Liverpool papers are concerned, I do not

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think I can say anything but what is respectable of them.

20,896. Where you find it a bad thing in the way you have named you think that would be an evil if it continued?—I do.

20,897. (Mr. Brierley.) Have you any Sunday papers in Liverpool?—No Sunday papers published.

20,898. The Manchester Sunday papers circulate there?—Yes.

20,899. Do they give a good deal of attention to these cases?—Fair, I think. I am afraid I do not read them much.

20,900. It is probably the Manchester papers that circulate in Liverpool?—Yes.

20,901. (Lord Guthrie.) You say that habitual drunkenness is found in very few of the separation cases. Short of habitual, the element of drink is a factor in most?—In most of the persistent cruelty cases.

20,902. Especially, and desertion cases?—Not so much desertion cases.

20,903. In many desertion cases?—Yes, it a factor, but I would not embrace that, because one has found in the cases of drink when once the wife or husband has been summoned it has the effect of sobering them. I have a man and a woman—I will give the case of a man as an illustration.

20,904. I quite understand the point. It was to distinguish between habitual drunkenness and drunkenness.

20,905. (The Archbishop of York.) I was interested in what you said about the number of cases of prolonged desertion in your experience, because at Liverpool, being a great seaport, there are many temptations for men to go away. In your 20 years' experience of Liverpool can you tell us how many cases of actual malicious desertion have actually occurred within your knowledge?—I would not care to commit myself to numbers, but I think they are rare, comparatively speaking, out of the large population.

20,906. Not more than one or two a year?—Probably at the outside half a dozen a year.

20,907. Does your special court for these cases meet weekly?—Every Wednesday at 2 o'clock in the afternoon; after all the other business is finished.

20,908. Is that sufficient to get through the business, as a rule?—Yes. The magistrates sit on till 6 or 7 o'clock in the evening if the case is not finished.

20,909. There is a special rota of magistrates?—Yes, arranged by the clerk at the beginning of the year, the same as is arranged for the summons court.

20,910. Have you any regulations about the admission of the public?—It is simply an open court, but we find that very few come who are not witnesses in the case.

20,911. Does that special court represent an atmosphere easier for decent women to talk in?—Yes. It is the police court and yet it is not the police court, if I may say so. It is not surrounded with the retinue of police you have in the ordinary criminal court. There is not so much evidence of a character which is not the choicest to hear as there would be in the ordinary stipendiary's court.

20,912. Having a special court is a great advantage to the proper treatment of these cases?—I am sure it is.

20,913. (Sir George White.) You have altered your proportion of the reconciliations in separation cases from 40 to 75 per cent. mainly on account of your personal visitations?—Yes.

20,914. Over what number of cases does that extend?—For the past year.

20,915. You do not mean this is over a series of years?—I took my first from the books I have. I mean the 40 per cent. dating back from 1894, and after I saw evidence had been given at this Commission and doubted, I felt I would like to be sure of my facts, and I took one year, that was last year, and I bring them up to 75 per cent., those who have resumed cohabitation.

20,916. Do you wish the Commission to understand that your first calculation was wrong, and that 40 per cent. is the percentage for a number of years, and 75 per cent. is for last year?—I would not say my calculation was wrong; it was an error of judgment, not taking sufficient notice of the question and putting it down as culling facts that appeared in the diary from year to year.

20,917. We have heard the percentage put as low as 15 for a large city?—I am not aware of that. I am speaking of what is the fact in the city I represent.

20,918. Can you suggest any reason why it should be 75 per cent. in Liverpool and 15 per cent. in other towns?—I had information of a private nature that in a certain town in the north it has been as high as 81.

20,919. The 75 per cent. is for one year?—Yes, last year.

20,920. By what society are you employed?—The Church of England Temperance Society.

20,921. You say that you do not find any widespread or any demand for greater facilities for divorce. Do you suppose that is accounted for by the knowledge amongst the poorer classes that it is practically impossible for them to get it?—It has not been mentioned except in rare cases. They come to me for advice, not to get another man, but because of the brutality and persistent cruelty of the man they are living with.

20,922. Is it your experience amongst the lowest classes that there is a large number living together as man and wife who are not married?—I do not find that in Liverpool.

20,923. (Chairman.) Would you suggest that your special court should sit entirely in private?—I do not think so.

20,924. You do not think it necessary?—No. The people that come there, if they come at all, simply come as witnesses, and if they have a desire to come to that particular court no absolute secrecy will keep them away.

20,925. Are the cases in that court reported?—Very rarely. There are reporters there every day, but the only difficulty in the reporting is this particular paper in which the facts get out.

20,926. Have you a Children's Court?—Yes, in the morning, at half-past nine.

20,927. Would it be desirable to put these matrimonial troubles on the same footing and have them in the same court in the same way?—I do not think so.

The Rev. HERBERT GRESFORD JONES called and examined.

20,928. (Chairman.) Are you the Vicar of Bradford?—I am.

20,929. How long have you been there?—Four years nearly.

20,930. Before that where were you?—At Keswick, and before that at Liverpool.

20,931. Have you found any demand amongst the poor for increased facilities for divorce or among the lower middle classes?—I should say practically none at all. I have found a considerable number of cases requiring separation, but separation entirely meets the need and the demand of such as we have. For a considerable number of years I was attached to a district which would come under the head of the lower middle class. There were 900 houses, and I think I may say

I visited every house, and I was struck with the high standard of married life. Cases of an unsatisfactory kind would number only four or five at a time. In my opinion a separation order meets the need.

20,932. You find no cases in which divorce would be a relief?—I have never felt any kind of demand for that, and the feeling just now in the city from which I come is exceedingly strong against any increased facilities. Signatures have been coming in; and at meetings of men resolutions have been passed.

20,933. Against what?—Against increased facilities for divorce.

20,934. Have you anything which has been signed?—We have not yet. I do not know whether anything has been sent in, but I have not anything with me.

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20,935. If you had anything I should like to see what the form is?—The statement is simply a signature against increasing the facilities for divorce.

20,936. That is so vague, one wants to see what it means. We had one the other day, which was a protest against divorce for trivial reasons, and it may convey something quite different to what many suggest. However, you have not a copy with you?—No.

20,937. With regard to facilitating divorce, do you think that that would increase or lessen unlawful connections?—It is an exceedingly difficult question to answer, but it would increase, what is the chief bane of married life, the coming in of the third party. Once married people get into difficulties, and introduce the third party on either side, it would give them the sense that they can find relief that way, whereas at present there is the sense that they cannot.

20,938. It is not the law that introduces the third party; it is the people themselves?—But the possibility of an easier divorce would make people yield to uncontrolled imaginations and thoughts possibly.

20,939. Do you think that is likely?—I do, indeed, very likely.

20,940. You say it is impossible to enumerate them, but that a very considerable number of reconciliations are effected. Is that after the separations have been applied for?—Yes, and during the process. In our city, with a population of 300,000, it is very striking the number of cases there are now to what there was some years ago. During the last few years the decrease has been from over 100 to under 40 for separation orders, through, I believe, the action of the magistrate largely.

20,941. By checking the number?—Investigating them before coming into court.

20,942. You have not had experience, but you say that a friend of yours has, or is it someone who works in the courts that you refer to?—During this last period I have been making inquiries of different people who have had experience.

20,943. You say here, "A personal friend of mine connected with the police courts estimates that such reconciliations amount to some 40 per cent. of the whole number." Is that right?—Yes.

20,944. You deal with the causes which lead to applications, persistent cruelty and habitual drunkenness mainly?—Yes, and as there has come up in the evidence already to-day, the hasty intervention of gossiping and injudicious neighbours who say, "Why do not you get a separation order?" If we could revise the whole matter of separation we might put it in a better position.

20,945. Have you thought out how you would arrive at it?—I have, indeed. I feel that the trouble has to be faced low down. We are in this stratum of society which is greatly in need of a code by which the younger women might be guided in matters of propriety in their love affairs. Though naturally education has great limits, yet the line taken by General Baden-Powell with regard to lads is effective. For the first time in my knowledge he has set out what ought to be the chivalrous action of a boy, and if something of the same kind could be done for girls we might introduce through civil or religious means a better kind of ideal.

20,946. That is hardly legislative?—No; it is more educational. The legislative line of prevention is so subtle that it is almost impossible to conceive one.

20,947. You cannot help us with any legislative suggestions on this point?—My legislative suggestions would follow the line of placing the work of separation orders on a higher level. I think something of what has been indicated, a special day with special magistrates. That would all help.

20,948. You have not that special court in Bradford?—I cannot answer that question. I am under the impression the stipendiary deals with these cases as they come up. I answer with reservation.

20,949. I do not want to ask you anything you are not sure about. As regards the county court, you consider that for many reasons would be a most unsuitable tribunal. Are you speaking of separation or divorce?—The reasons that come to me most are these: if you introduce divorce proceedings into the county courts, you would get a very divergent number of judgments,

and that would lead to running about from one part of the country to another. Certain judges would be known to be easier than others, and I am of opinion if it were removed from London it should be tried by judges of the Divorce Court or High Court judges who sit at assizes.

20,950. Are you in favour of leaving the Act as it stands, or repealing it?—I am in favour of leaving the Act as it stands.

20,951. The Act of 1857?—Yes. I am speaking of the present order of things; I am not sure whether I am referring to the 1857 Act.

20,952. That is the Divorce Act?—Yes.

20,953. Would you place men and women on the same footing?—No.

20,954. What would you do on that point? At present they are not on the same footing?—I think they ought not to be quite on the same footing. Are we speaking of divorce or separation?

20,955. Divorce?—I am of opinion that the guiltier party is the woman.

20,956. You mean you think she should have to prove the grounds that have to be added against her husband before she can get a divorce?—Yes, I think so.

20,957. You know them?—I am not clear.

20,958. A woman has to prove more than adultery; she must prove one or two other offences?—Yes; that is what I would leave.

20,959. Why would you do that?—Because I feel one lapse might, in the case of a man, where in my judgment the temptation is greater, be followed by reconciliation, and some graver cause should be required before the complete severance were brought into action.

20,960. The last point you mention is with regard to the publication of reports. Do you entertain a strong view about that?—There would be nothing gained by keeping the public out of court. Anything in the way of secrecy would only instigate further inquiry, but I would institute some kind of censorship of press notices of these proceedings. That censorship should be lodged with the court, or with the judge, but at all events it seems to me, as in war cases, where there is censorship of the Press, so in these cases there might be. While admitting the public to the courts, I would give opportunities to check the publication of undesirable matter.

20,961. Do you have papers in Bradford which err in that way?—We are particularly fortunate in our Bradford papers. The fuller reports are in the London papers, where the cases are tried.

20,962. Have you come across instances where you think they have exercised a corrupting influence?—Among lads and men, and especially among girls.

20,963. That has come in your own practical knowledge?—It is exceedingly difficult to instance cases of that kind, but from what lads and men have said I should say I could count it as coming within my knowledge.

20,964. I want the sources of your views.

20,965. (*Sir George White.*) You are not agitating for the repeal of the Act of 1857. Are you in favour of any extensions of the grounds of divorce?—I am of opinion, if you ask me frankly, that a divorce and separation are one and the same thing. Where these proposals fail to introduce a remedy is this, the proposal, which seems to me to be before some, is to encourage the re-marriage of those that are divorced, which would only introduce what would run counter to the better part of the conscience of the nation. It is not divorce but re-marriage which is the fundamental matter with me.

20,966. (*Chairman.*) Re-marriage with anybody?—Yes, during the lifetime of the former partner.

20,967. (*Sir George White.*) Would you regard re-marriage of a divorced person as a condition of immorality?—During the lifetime of the other partner.

20,968. You say cheapening of divorce would increase immorality. You come across a good many cases of separation where the woman or man, or both, have chosen fresh partners?—I am sorry to say I come across a very great many evil cohabitations of that

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kind. In our part of the country the great trouble is cohabitation without marriage.

20,969. And also cases where there has been a separation and the man or woman has formed illicit connection?—There are such cases, undoubtedly.

20,970. If, instead of forming that connection, one or the other re-married, you would not regard their relationship as any better?—It would be no better, in my judgment.

20,971. You say signatures are coming in very freely indeed to the question put, "Are you in favour of increased facilities for divorce"? Signatures against increased facilities?—That is so.

20,972. If you had put the question, "Are you in favour of one law for the rich and another one for the poor?" would you not also have got a very large number of signatures?—One law for the rich and another one for the poor—that brings us back to the question as to whether it is something the poor want. I do not think they desire this privilege of the rich. I have never come across it, nor do my friends come across that desire.

20,973. The answer to these things depends largely on the form in which the question is put. Do you think everyone who signs against increased facilities understands what they are signing for?—I beg your pardon, I feel they are due to a very deep conscience latent among English people with regard to married life.

20,974. In regard to the difference you make in your judgment upon one lapse in the case of the male sex as against the female, is that your idea of justice, or merely, on the ground of expediency, that you would not take notice of the one lapse in the case of a man?—It is not a point I have gone completely into, but it seems to me we have clear evidence in nature that the one suffers more than the other, and I am clear in my own experience that there are possibilities of a far greater and easier restraint in the reach of the one sex than the other, and it seems to me that we must follow out nature in forming a basis for action.

20,975. Do you regard the act as less immoral?—None whatever; it is simply the question of divorce. I look upon the act as equally sinful for both. It is a question of taking the final severance of divorce.

20,976. (*The Archbishop of York.*) You are speaking of the public opinion in Bradford as far as you know it. Would you say it was the opinion of the clergy as well as your own opinion?—The opinion I have been quoting has not been the clergymen's opinion; it has been the opinion of working men.

20,977. Would you say it was absurd to regard the feeling aroused in this matter as an instance in which the clergy and the laity differ from one another?—I should say clearly they did not differ more than they differ on a considerable number of subjects. On this great matter of marriage I think the great bulk hang entirely together.

20,978. When you spoke in answer to Sir George White's question about those whose views you are expressing, would you say most of them were aware that expensiveness was a difficulty in the way of getting divorce?—Quite aware.

20,979. The people you are speaking of are the intelligent persons who know the position of the law?—Entirely.

20,980. In spite of that they take the view you mention?—They do.

20,981. What class are you speaking of mainly?—They vary from the upper middle and lower middle class to the working class.

20,982. With regard to your distinction between men and women, have you any ground of principle beyond what you state in distinguishing between the guilt of a man and the guilt of a woman as a ground of divorce?—No, I have not.

20,983. Have you in mind the old reason of the distinction which was called the confusion of progeny? In the case of a woman that is the risk, that her sin might bring into the family the child of another man?—I was thinking rather on practical grounds in England to-day. I have had lamentable instances quite lately, travelling late at night, in camp with lads,

of the extraordinary increase of a breakdown of the natural reserve on the part of young girls, and I am very much of opinion that their part of the matter is the graver responsibility.

20,984. Is not one reason why, in your experience, men treat this matter with a certain degree of levity, that the law does make this distinction?—I do not attach any weight to keeping things as they are. If it would make for greater morality I should be in favour of putting both on the same level.

20,985. Is it not your experience, in dealing with the class of people you continually deal with, that there is a notion that these things are natural enough for a man and very unnatural for a woman?—If putting both on the same level would deter that I should welcome it.

20,986. Until the law does take up that line, there is so much public sanction given to the notion that there is a difference in the sin or guilt between the one and the other?—I see that very fully. It is not a point I have gone into as deeply as I should, perhaps, and anything that would accentuate the sense of guilt all round would do good.

20,987. May I take it what you have said on that matter you would not wish us to take as your considered judgment?—Not at all.

20,988. (*Lady Frances Balfour.*) With reference to these signatures you are speaking of, are they from men who are against any change in the divorce laws?—The ones I mean are more from women. I think there will be some from men.

20,989. We are getting signatures from women all over the country, attached to the Church of England Temperance Society, asking that the law should be made equal?—It is so.

20,990. Showing that the women desire it. Does not that weigh in your views?—Decidedly. I have not gone into that point. I did not know it bulked so large. It has not come up in any of the questions put, and, looking at it as I see it is being looked at, I see the advantage of levelling it up.

20,991. When you said you did not know it bulked so large, you meant with men? It naturally bulks largely with women; it is an act of injustice. The bulk is largest of all with women. To them it seems an act of injustice it should not be made equal, that they should have to produce evidence of cruelty as well. The women are naturally thinking for themselves for the moment?—Naturally. It is not a matter which I have weighed as I should have weighed it, and putting it as it has been put this afternoon, I see equal treatment might do more than anything else to achieve the one end I have.

20,992. Do you know of any meetings at Bradford from which they have sent up one of these resolutions?—Our resolutions are coming mainly from the Mothers' Union.

20,993. The Mothers' Union certainly gave evidence as to their being equal. After to-day I think, perhaps, you will not take the same view?—I do not think I shall.

(*Chairman.*) You ought to see the sheaf of circulars we get. They will be produced in due course.

20,994. (*Lord Guthrie.*) I rather think in your evidence to-day you do not go so far as to leave the law as it is. Your view was directed to the case of one lapse. The law at present prevents a woman going for divorce on the ground of adultery alone, even though there have been a thousand lapses and a continuous course of adultery, a mistress kept in the house corrupting young girls?—I was not aware of that.

20,995. You have referred to the meetings and used words which were a little suggestive. You have talked of the question of privilege and giving credit to the lapse. I am afraid that is not the question we want people's opinion upon. The question is giving a remedy for a wrong done of the most serious character that can be done to man or woman, and whether that should be, as it is now, confined to the rich. It is not a question of privilege. Has that question been put before you?—It is the question, it seems to me. The question we are debating is what that remedy is to be.

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The Rev. H. GRESTFORD JONES.

[Continued.]

Many feel this proposal to facilitate divorce is offering the reverse of a remedy.

20,996. There is no proposal for facilitating divorce so far as the poor are concerned. You cannot facilitate what they have not got. It is giving to the poor, not facilitating, the giving for the first time what has been given only to the rich. Do you say the working-man is against that?—Unless it means remarriage, which it would mean.

20,997. No, not in the least?—Then they have separation, which is the same as divorce without remarriage.

20,998. Why? The woman remains the man's wife, and has the status of the man's wife, and can keep his name. Do you not think a man has a good motive to terminate the connection with an adulterous and drunken wife? Are there no cases where, in the interests of the children, the desirable thing and the only adequate remedy for the poor workman to enable him to restart his household on a moral basis and safe basis for himself and children, is divorce? There may not be many, but are there not some?—I merely say we do not hear it being asked for.

20,999. Would you expect to hear it when they know they cannot get it? That was said about the slaves in the South, they were quite satisfied?—We hear so many things asked for nowadays.

21,000. (*Sir Lewis Dibdin.*) Apart from this particular matter, you would not be in favour of there being a remedy open to the rich which was not open to the poor?—Certainly not.

21,001. No man in this country or any other country ought to suffer a wrong because he cannot afford to put it right?—I entirely agree.

21,002. Lord Guthrie put it that hitherto it has been the affair of the rich. Have you gone into the statistics of the Divorce Court? Do you know the character of the cases, the social position of the people who frequent the Court?—I think I am generally aware of that.

21,003. Are you aware that a very large proportion of them are quite poor people?—I was not aware of that.

21,004. We have been told so here. I want to put your evidence right, if it is putting it right, to this extent. Your objection to the ground of greater facilities for divorce is not directed to debarring men on the ground of their poverty from access to the courts?—No, certainly not; let the courts be open to them in some way.

21,005. Let them be assisted?—Certainly.

21,006. With your experience of separation orders, you know at present adultery on the part of either side is not a ground of application for a separation order. A man cannot get a separation order from an adulterous wife. That has been spoken of in the police court. That is not one of the grounds?—I would make it one of the grounds.

21,007. You quarrel with the law?—Yes.

21,008. You would make adultery a ground of separation?—I meant I would not extend divorce all over the courts of the country.

21,009. You would make adultery a ground of separation?—Decidedly.

21,010. You realise so far the whole purpose of those Acts has been something different?—Persistent cruelty and desertion.

21,011. And failure to maintain?—Yes.

21,012. The legislature, rightly or wrongly, has no doubt deliberately kept away from matrimonial offences in the strict sense?—In what I said about the raising of the standard of separation orders, I should make it include the cases of adultery.

21,013. Whatever may be the theory, as a matter of practice, as a practical policy it would be wiser to allow them to raise the question of adultery in the police court and to get a separation order?—Yes.

21,014. If a magistrate is to deal with the issue of adultery, what is your objection to the county court judge?—That is divorce; the county court judge is to deal not with separation orders, but divorce.

21,015. Do not let us confuse things. The issue will be the same although the result may be different, in one case separation order, in the other divorce. The issue to be decided will be the same, namely, whether adultery has been committed?—The result would be different.

21,016. If your objection is on the ground divorce is granted, that is not an objection addressed to the county court, but any court?—My objection is to remarriage.

21,017. As the result of proceedings in any court?—During the lifetime of the other partner, as the result of proceedings in any court.

21,018. That would be your objection, whether divorce was obtained in the county court or in the divorce court?—Yes.

21,019. What is the ground of your objection to the county court? You say the county court would for many reasons be a most unsuitable tribunal. I thought I understood that you told me you thought that adultery ought to be a ground for getting a separation order before the magistrate. That means that the magistrate is a suitable judge to decide whether adultery has been committed or not. If the magistrate, why not the county court judge?—For the reason that he would not be deciding whether adultery had been committed, but whether the whole of the tie was to be broken. Separation leaves it possible for husband and wife to come together.

21,020. That is an objection to any court granting divorce. The county court judge would not decide whether it was to be divorce or not, but whether adultery had been committed. If he found it had the law would do the rest. Is your objection to the county court judge founded on anything incidental to the county court, or an objection to divorce in the sense of remarriage?—No. Having said what I have, my objection is founded upon the confidence that we have in those judges who come round to Assizes, as compared with the confidence we have naturally in the far wider circle of county court judges. Surely the public are warranted in attaching greater respect and reverence for the higher branch of the profession?

21,021. How does that agree with thinking the magistrate a suitable person to decide the issue of adultery?—Because he is not deciding the possibility of breaking the whole marriage tie.

21,022. That is the result that follows from his decision, but the issue he has to decide is the same, whether the result is separation or divorce?—I simply come to that, the consequences seem to be different.

21,023. (*Judge Tindal Atkinson.*) You said with county court judges there would be too much diversity of judgment. If the matter is limited to adultery, that is a question of fact, and there can be no diversity of opinion, just as if you give the jurisdiction to the magistrates in adultery the same issue there is no diversity. It is a question of evidence upon which the adultery is found?—It would be so.

21,024. In the whole of your experience in Bradford have you never met with a single instance in which a divorce would be a right remedy in the circumstances of the case amongst the people with whom you have been brought in contact?—I have several very grave cases in my mind, but my instinct tends to make me feel that the separation, which in many cases there is in fact, whether they have had an order or not, meets the case.

21,025. With regard to those grave cases, do you think the party who has suffered is a party to resolutions against facilities for divorce being brought within the reach of the poor?—In my experience it is nearly always the case they are both to blame, and it is difficult to disentangle which is the greater.

21,026. If they have not joined in the protest against jurisdiction in divorce being extended to those persons who are injured, the only persons who resolved that divorce is not wanted are those who have not suffered?—I think signatures are based on principle, but those who have been injured in the way you are speaking of have not signed anything or taken any part, to my knowledge.

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[Continued.]

21,027. (*Chairman.*) Following what Sir Lewis Dibdin has asked as to adultery, which you answered, about adultery being put before the magistrates as a ground of separation, I think that is your view?—Yes.

21,028. Do you think that might lead to abuse by people of good position and high standing applying to the magistrates for that sort of order in order to be objectionable?—We are dealing with the case of the rich having the benefits of the poor?

21,029. They have the right to go into the police court just as much as anybody, but they do not do it because the limitation of allowance is 2*l.* a week. You know that, I daresay?—Yes.

21,030. The magistrates cannot order more than that. I can conceive, if that suggestion you make were adopted, a person who is fairly well off might attack the other side before the magistrate on the ground of adultery for the sake of annoyance, putting them in the police court. Do you suggest any guard against that?—I do not think it would be liable to abuse.

21,031. Not amongst the poor?—I mean among the rich.

21,032. It is not a danger to be feared?—I am simply stating it as a matter of opinion. I do not think it would be any danger.

(*Chairman.*) We thank you for your evidence.

Mr. GEORGE BRYAN COOKE YARBOROUGH called and examined.

21,033. (*Chairman.*) Are you the Chairman of the West Riding Quarter Sessions?—Yes.

21,034. And Chairman of the Doncaster Petty Sessional Division?—Yes.

21,035. I am not sure whether you wrote offering to give evidence, or whether your name was supplied to the Commission: can you tell me?—I think the secretary wrote to me.

21,036. Is your population in Doncaster or in the division?—It is the division, the West Riding Petty Sessional Division; the county division is about 89,000.

21,037. The population is largely industrial?—Yes.

21,038. The majority of the working classes are miners and glass-bottle makers, and a minority is agricultural labourers?—A few.

21,039. You have put before us the question of separation orders?—Yes.

21,040. What do you wish to present to us upon that? Will you give your views shortly?—I should leave separation orders as they are under the present Act of Parliament. I should not add any reason to be brought before a Petty Sessional Bench for granting separations.

21,041. Would you approve of the suggestion of the last witness, that adultery should be added?—No.

21,042. Not for a separation?—No.

21,043. Why do you think that?—I do not think a bench of magistrates is competent as at present constituted. They have much more experience in assault and cruelty cases and that kind of thing.

21,044. Would you regard them as protectors of the poor?—Now there are large additions to the bench of magistrates, and some are eminent in other ways, but they have not had a great deal of experience in administering justice. If you had a bench composed of some of them, or the less experienced ones, it would be a serious thing if they should have to deal with the question of adultery.

21,045. They have to do it if the husband sets up the adultery of the wife now?—Yes, but that very rarely happens.

21,046. Still, whether it is rare or not, they have to do it?—Yes.

21,047. You refer to some misapprehension as to the powers of magistrates which existed for a time. Has that misapprehension been removed? Was that the question of being bound to make an order?—Yes. The Act says you may do all or any of the things.

21,048. Now you make a maintenance order only?—We do in most cases where we can. There are some cases where we think a separation ought to be given, in cases of persistent cruelty.

21,049. Where a woman wants protection you give her a separation, but where a woman wants money you give her a maintenance order?—Yes.

21,050. How many applications during the last five years were made before your bench?—143 applications have been made for summonses.

21,051. In 42 of those cases there was no appearance?—No; and 20 were dismissed as frivolous. There is a large number in which separation orders have been granted, but, in the opinion of the court, they thought that they ought to be maintenance orders.

21,052. Of the remaining 81, 76 separation orders have been made with maintenance and custody of

children, and five orders for maintenance without separation?—Yes.

21,053. You go on to say that cases of persistent cruelty are those which demand separation?—Yes, I think so.

21,054. Do you find that the physical cruelty has been serious in many cases?—Yes; it is terrible in some, not in many, but in some it has gone on for years. We have women who have been married for 20 years who have been treated with cruelty and have put up with it until they have been obliged to come to the court for protection.

21,055. Do you think those are cases in which they might be allowed to apply for a divorce if they chose?—I think in some of them they might. I thought then, and I think now, unless the man alters cohabitation is impossible.

21,056. If it is impossible, is it not better to grant a divorce?—Instead of a separation?

21,057. Yes?—My view is not to extend the grounds of divorce.

21,058. Do you think that separation is an adequate remedy for such a case as you have mentioned?—Yes.

21,059. Then you have a point, but I am not sure of the bearing of it, as to the compulsion of the wife to solicit prostitution?—You refer to the sentence in my proof: "Among these are cases of compulsion of the wife to solicit prostitution"?

21,060. Yes. What is the point about that?—It comes among other heads of cruelty. A man has treated his wife with cruelty and thrashed her and made her go out to solicit money by means of prostituting herself, and if she has not brought sufficient money back she gets thrashed again.

21,061. Would you still think that separation was a sufficient remedy for that condition of things?—I hardly think it is in a case like that. It goes to the extreme limit.

21,062. Then, with regard to aggravated assaults, you say that they do not necessarily imply a course of ill-treatment; they are possibly due to drink?—I have known where a man has lived well with his wife and very little has happened, but he has come home drunk, and in the middle of the night made a terrible assault on his wife, which he would not have done if sober.

21,063. Is the point that there is a better remedy for settling that than separation?—In several cases the man has been bound over and then he has left his wife alone, and I have got to know from outside sources that this has never happened again, it has been an isolated instance.

21,064. Binding over probably is better in a case like that?—I have found in so many cases that binding over is the best remedy for other offences.

21,065. Instead of sending him to prison?—With or without sureties. It seems to hang over his head. Now you can bind a man over for three years, and it keeps him out of mischief for a long time.

21,066. That is better than sending him to prison where he cannot earn money?—One of the conditions of the recognisance now is that he should be under the Probation Officer. The Probation Officer would call and find out how he was treating his wife, and he would be bound to report to the magistrates how these

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[Continued.]

two were living. That is under the last Probation Act.

21,067. You have some observations to make on desertion?—Yes. They are the most frivolous of all, and nearly always made up, except where a man goes away and you do not hear any more of him. These cases often arise out of very small quarrels, and I have noticed that it is chiefly during the first year or two years of married life when girls have married very young. They do not know how to keep house, and the husband has faults, and there is a quarrel and they go away.

21,068. The proper remedy is maintenance and not separation?—Yes.

21,069. Have you formed any view as to what should be done where the desertion has been long-standing, with no intention to return?—No.

21,070. I daresay those cases do not come before you?—We do not hear anything about them.

21,071. Do you know to what extent the parties do come together again?—No. I have made inquiries, and I cannot ascertain any percentage. I have asked clergymen and doctors, and people who live in the mining districts, but in these cases of desertion they have come together often very quickly. That applies in cases whether there has been a separation order or not. It does not seem to produce a different effect on the minds of these people.

21,072. Have you had cases in which there has been a plea of adultery raised?—They have not come before me personally, but there have been cases. In a few cases the plea of adultery has been raised, but it has never succeeded.

21,073. Have you had cases where there has been an application to quash the order afterwards?—There have been two or three on account of the misconduct of the wife.

21,074. Have you found or been informed as the result of your enquiries that where there has been a separation order there has been immorality afterwards?—Yes, no doubt.

21,075. On both sides?—On both sides.

21,076. What is your view as to drink being the cause of these troubles?—I have a very strong opinion about that. If the men could keep sober or drink moderately, as far as assaults are concerned, aggravated assaults and persistent cruelty, there would be little of them. We hear the time of night when the man comes back drunk, and that is nearly always when the assault has taken place.

21,077. To what extent have you found that there is no demand for increased facilities for divorce?—I do not live among the mining people, so I do not know. I have no personal knowledge of their requirements, but I was told by people in whom I had confidence that there was no demand, and stated so in my précis. Since then Labour magistrates have told me that if there were facilities for divorce there would be application. It does not at present enter into the lives of that class of people. They do not want to get a divorce. I do not know any case in which they have applied for divorce. I presume that is on the ground of expense. I think if you were to give facilities the supply would create the demand, and if it got about that divorce could be obtained very cheaply, say for 3*l.* or 4*l.*, there certainly would be a demand.

21,078. That means that the wrongs exist, but at present there is no means of getting a remedy for them?—Yes. If you take the highest type of men, those miners, whose wages run from 45*s.* to 3*l.* a week, they are the aristocracy of the working classes there. People with less than that cannot afford to get a divorce, or it has not entered into their scheme of life.

21,079. Who is the Labour member to whom you refer?—The members of my Bench, two *ex officio* magistrates, who are checkweighmen.

21,080. You seem to indicate the grievances exist, but you see no hope for remedy, although you say, if there were facilities, they would be used?—Yes.

21,081. Is your view in favour of allowing cases of divorce to go to the county courts or to the magistrates?—No, I should not let the magistrates have divorce

jurisdiction or the county court. It ought to be tried by a judge of assize in the country. With regard to expense, it seems to me that the procedure in criminal cases might be adopted, that the county could pay part of the expense. In criminal cases witnesses are bound over to prosecute, and the county pays the expenses. A modification of that system might be carried into the civil courts at assizes.

21,082. Your last point refers to the standard of morality in the district?—It is impossible to say of any class that it is immoral. Take colliers: they are not, but they may be divided into all sorts of classes. There is a large number of people who are not miners or glass-blowers; they are people who congregate in mining villages and large industrial centres; they are here to-day and gone to-morrow, and they do not seem to have much sense of morality. If you take the population and the number of applications, the applications are very small, and the applications for divorce would be very small, because the greater proportion of the working men are respectable, but still there are black sheep amongst them. May I add one thing with regard to the payment of maintenance. The magistrates have power to order it to be paid to a third party under the Act, but it is rarely done. In my opinion the best person to pay it to would be the probation officer. There is one in every division, and there must be one woman for women and children.

21,083. Is there one or are there two officers?—No; some divisions have two, a man and a woman, but in some cases only a woman. It ought to be one of the duties of the probation officer to receive these payments and keep an account, and hand them over every week.

21,084. The woman would attend at the office, or where would it be?—The woman lives in the centre of the division and goes to the mining villages to look after the various women and children.

21,085. It would be within her power to pay them?—Yes. She could easily visit these women every week and pay the money. Where the man is ordered to maintain his wife and has not paid, it is rather a difficult question how he is to pay her, because she has no legal right to live apart, although she generally does. If it could be paid to the probation officer, either the man or the woman, it would facilitate it.

21,086. Now, with regard to maintenance orders, the maintenance order goes if they resume cohabitation?—Yes.

21,087. Would you suggest that order should remain in force until the woman applied to have it cancelled, even though the husband came back? He might come back and go off again. If he comes back for a day, away goes the order; and if he goes away again she must apply again for it?—Yes, that is where separation orders and maintenance orders have been given.

21,088. No, where a maintenance order only has been given. If he goes off she has to come again?—I had not thought of that; that is to say, where a maintenance order is granted, if a woman is living with her mother and she goes back and lives with her husband again, I did not understand that the maintenance order then lapsed.

21,089. It does?—I did not know that. The separation order would lapse, but I did not know that a maintenance order would.

21,090. Do you think that it would be a good suggestion if that order ran on unless she asked to have it cancelled?—I think the maintenance order should run on.

21,091. So that if she wants it again she would not have to apply for it?—Clearly.

21,092. (*The Archbishop of York.*) Your district is a very wide mining district with large mining villages?—Yes.

21,093. Is it only recently that you have had a probation officer, since the last Act?—The Act has not been passed long—it was 1908, I think.

21,094. Now you have in each division a probation officer?—Yes.

21,095. That is the case throughout the country?—Yes.

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[Continued.]

21,096. What was perhaps difficult in such areas as yours some time ago, namely, payment to be made by the officer of the court, is easy now?—Yes, Now there is a person whose natural duty is to undertake it.

21,097. The area would not be too great?—No; if the area is too great you have two probation officers.

21,098. Does your officer do any work at the request of the magistrates in the way of seeing the people?—The condition of the recognizance is that he is to be under the supervision of the officer. In our case it is a woman, and the girls and women she visits once a week, and reports to the magistrates.

21,099. You are using a probation officer for that purpose?—Yes.

21,100. It would increase the percentage of reconciliations?—Yes.

21,101. With regard to what the Labour members on your Bench said, I want to ask you a question. They said divorce does not enter into their lives, and that the supply would create the demand. The suggestion was made that means wrongs existed, and when the remedy is found they will show themselves. There is another meaning you can put upon it, is there not, that people now do not contemplate divorce, and get on without it; but if it did come within their scheme of life their standard of family obligation might be interfered with, and they would proceed to make use of divorce?—Yes.

21,102. One interpretation is as legitimate as the other?—Yes.

21,103. (*Lord Guthrie.*) Would you have the money paid to the officer by the man or paid by the employers?—These people are sometimes out of work.

21,104. Supposing a man is in work, suggestions have been made, but it has been said that the employers would not do it, and that they might dismiss the man?—Possibly they might do so.

21,105. (*Judge Tindal Atkinson.*) Does it strike you that the county courts can have this advantage over assizes: the assize judge is there only for a short time, and then he goes back to London?—Yes.

21,106. The county court judge is on the spot always, more or less?—Yes.

21,107. With reference to the custody of children, is it not important to have a judge on the spot who can have control over the custody of children and the question of access to them?—That you get with a bench of magistrates in the case of separation orders.

21,108. In divorce, parties have to go to London, whereas if the county court had jurisdiction they would go to the county court judge?—Yes.

21,109. That would be an advantage in the county courts having it?—Yes, it would be one point in favour of county courts having it.

(*Chairman.*) I ought to thank you very much for your evidence and the assistance you have given us.

Adjourned.

Winchester House, St. James's Square, London, S.W.

THIRTY-FIRST DAY.

Tuesday, 21st June 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace The LORD ARCHBISHOP OF YORK.
The Right Hon. The EARL OF DERBY,
G.C.V.O., C.B.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
The Hon. LORD GUTHRIE.

Sir WILLIAM R. ANSON, Bart., M.P.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour JUDGE TINDAL ATKINSON.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

The Right Rev. THE LORD BISHOP OF ST. ALBANS called and examined.

21,110. (*Chairman.*) My Lord, you have been good enough to prepare a short memorandum to lay before the Commissioners, which, as far as I read it, is composed of the expression of certain views as to what shall be the position of the Church in the case of any legislation that may arise as the result of this Commission; and I rather gather from it that you wish to confine what you come to say to this memorandum on that point. That is so?—Yes.

21,111. Perhaps the shortest way would be if you would read what you wish to say, and then any question on that will be put. I know your time is very pressing?—I shall be very glad to do so, my Lord. This is really part of a letter which I issued to the Rural Deans of the Diocese of St. Albans on the 27th November last year: "The question of the marriage of divorced persons has of late been raised in my diocese in ways which prior to experience could scarcely have been foreseen. By the English Divorce Act adultery must be proved to obtain a divorce, and the person who has obtained a divorce for the adultery of the other partner is able to claim marriage in our churches, while the guilty partner

can only claim marriage in our churches if a clergyman can be found to take the marriage. It is a very serious wrong that there should be any possibility of the guilty partner being married in a church, and I am sure that the clergy generally will exercise their rights and refuse to solemnize such marriage. But the difficulty has arisen lately in another form. When civil marriage at a registry was made legal, the clergy ought to have been relieved of their legal obligation to marry all who had marriage rights in the country, but they were not. And among those who are legally entitled to be married in this country are persons domiciled in another land, whether or not they are British subjects. And the courts hold that when persons thus domiciled have been divorced in the land of their domicile, the English law recognises that divorce without entering into the ground on which it has been given. The consequence is that any person divorced according to the laxest law of any civilised State in the world (this remark does not apply to Hindus, Mahomedans, &c.) can come to England, claim the hospitality of the country, and

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[Continued.]

“ therein claim the right of marriage in return for
 “ obedience to the law of the country, and there is no
 “ legal power to enter into the grounds of the divorce.
 “ Two cases of such claim have recently occurred in
 “ my diocese, one in each of the two counties.
 “ In the one case, an American citizen who had
 “ been divorced, or obtained a divorce, on grounds
 “ said not to affect moral character, but grounds never
 “ recognised in the English Divorce Act, was married by
 “ banns. In the other case, a British subject domiciled
 “ in Ceylon, had obtained in Ceylon a divorce on the
 “ ground of his wife’s ‘malicious desertion,’ and was
 “ married in a church by licence. It is easy to see
 “ that if this is permitted a very wide extension of
 “ the Divorce Act results, not foreseen when the Act
 “ was framed. In my diocese, the chancellor of the
 “ diocese, who does not permit surrogates to give
 “ licences in cases of divorce, but insists on all such cases
 “ being referred to him, has now come to the conclu-
 “ sion that, while he is bound to hear judicially any case
 “ that may be brought before him, there are sufficient
 “ reasons to justify him in refusing a licence when the
 “ divorce has been granted elsewhere on grounds not
 “ recognised in the English Divorce Act. In reference
 “ to banns, I am of opinion that in my diocese the
 “ clergy ought to refuse to publish them in all
 “ such cases, and to throw all responsibility upon
 “ me. The bishop has the power to veto any action
 “ brought against a clergyman in such cases. I should
 “ not hesitate strenuously to support a clergyman in
 “ refusing to marry a man or a woman who had
 “ obtained a divorce outside England on grounds not
 “ recognised in the English Divorce Act. This is not
 “ a satisfactory settlement of the question, but it is all
 “ that in the present state of the law is possible. I
 “ fear that these difficulties are but a sample of the
 “ difficult problems likely to arise under the present
 “ law, and I share the view of many who hold that the
 “ only final solution is to be found in universal civil
 “ marriage, the religious bodies being free to lay down
 “ their own rules with respect to the bestowal of the
 “ Church’s Benediction.” Perhaps, my Lord, I may just
 “ illustrate this by those two cases. One of them was a
 “ case (I wish to omit names of men and of places) in Hert-
 “ fordshire in the year 1907. I found that the ground of
 “ divorce was incompatibility, as stated by a near relation
 “ of the person married; and the clergymen, without
 “ taking council with me, sought the advice of a solicitor,
 “ and ultimately took the marriage. This led to my con-
 “ sulting the Chancellor of the diocese, Mr. A. B. Kempe,
 “ who wrote me a very careful letter which I should like
 “ to quote: “I have very carefully considered this case and
 “ have come to the following conclusions:—(1) Since the
 “ decision in 1882 of the case of *Harvey v. Farnie*, a
 “ decision in which the House of Lords unanimously up-
 “ held the unanimous decision of the Court of Appeal,
 “ affirming the decision of Sir James Hannen in the
 “ Divorce Court, it must be regarded as settled law that
 “ the divorce of a foreigner by a court of his own country
 “ is a good divorce, which must be regarded as such
 “ here, even though the marriage took place in England,
 “ and the divorce was decreed for reasons for which
 “ our own courts would not grant a divorce. *A fortiori*
 “ this would be so if the marriage was between two
 “ foreigners in their own country, and the divorce was
 “ pronounced there also. It must, therefore, be taken
 “ that Mr. A. B.” (I omit the name) “was in the eye
 “ of our law an unmarried man. (2) It must also, I
 “ think, be taken to be the law that a foreigner while
 “ resident in England owes allegiance to our King and
 “ is subject to our laws, and in return is entitled to
 “ the protection of those laws, and also, speaking gener-
 “ ally, to the privileges which those laws afford. I can
 “ see no reason to doubt that the right to be married
 “ here is one of the privileges thus afforded. This
 “ point does not seem, however, very material, as the
 “ religious difficulty which arises in the present case
 “ would equally have arisen if Mr. A. B. had become
 “ a naturalised Englishman before the second mar-
 “ riage. (3) No distinction can legally be drawn
 “ between the law of England and the law of the
 “ Church of England, and it would be impossible to
 “ contend that Mr. C. D. in marrying A. B., a single

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“ man entitled by the law of England to be married
 “ here, had violated the law and laid himself open to
 “ ecclesiastical censure. (4) Technically speaking, I
 “ think that C. D.” (the vicar) “was bound to cele-
 “ brate this marriage. Our Divorce Act has no
 “ application, as its provisions apply only to divorces
 “ in our own Divorce Court. Moreover, as stated by
 “ Sir J. Hannen in *Harvey v. Farnie*, ‘It is per-
 “ fectly true that in some cases we do not recognise
 “ the status derived from the country of the domicile
 “ where such status would interfere with our view
 “ of the interest of our country or our subjects
 “ or of morality and the highest justice. I refer,
 “ for example, to the status of slavery, but a decree
 “ of divorce has never been put upon such grounds.
 “ It would always have been impossible for us to
 “ do so with consistency, not only now since the
 “ constitution of this Court, but also previously,
 “ inasmuch as divorces could even then have been
 “ obtained here, although not by an appeal to the
 “ ordinary tribunals. Whereas, in this case, the
 “ divorce is decreed by the court of the country
 “ where the parties were domiciled, we have nothing
 “ to do with the grounds upon which the tribunals
 “ of that country may proceed in declaring what
 “ shall entitle the man or woman to have his or her
 “ marriage dissolved.” That is the quotation from
 “ Sir James Hannen. Then Mr. Kempe goes on: “It
 “ is, no doubt, unsettled law whether a clergyman who
 “ refuses to marry parties who are entitled to be
 “ married could be indicted or have civil proceedings
 “ for damages brought against him, and so far as I
 “ know, the question whether he could be compelled by
 “ a mandamus to marry has never been raised. Pro-
 “ ceedings could be maintained in the ecclesiastical
 “ courts in respect of such a refusal; and, as at
 “ present advised, it appears to me that the facts of
 “ the present case would afford no legal answer to
 “ such proceedings. Such proceedings would, how-
 “ ever, be subject to the episcopal veto, and, if a
 “ clergyman refused to marry in a case such as the
 “ present, or on conscientious grounds, in view of the
 “ respect which the Divorce Act and the recent
 “ Deceased Wife’s Sister Act pays to such con-
 “ scientious objections by releasing clergymen from
 “ the duty of marrying guilty parties in divorces
 “ and deceased wife’s sister, it would be difficult
 “ for anyone to criticise the exercise of the veto.”
 “ That is the letter. Then there comes the second case,
 “ and the second case was that of a Ceylon gentleman
 “ who had obtained a divorce for malicious desertion.
 “ The case was formerly brought before me by the Bishop
 “ of Colombo rather complaining that the marriage of
 “ two persons who lived in his diocese had apparently
 “ been solemnised in my diocese, and stating that in
 “ Ceylon there was nothing known of the action for
 “ malicious desertion until the second marriage was
 “ announced, and then it appeared that this action had
 “ been brought by the husband on the ground of mali-
 “ cious desertion, his wife having been unable to live
 “ with him and having gone to her friends at home;
 “ and the domicile was established as being in Ceylon,
 “ and this gentleman obtained his divorce. Having
 “ obtained his divorce, he desired to marry a lady—also a
 “ Ceylon lady—but he desired to marry her in England,
 “ and it was not until after the marriage had taken place
 “ that I had the slightest idea that this was a similar
 “ case of a person divorced outside England on grounds
 “ which the English law does not recognise as grounds
 “ for divorce. I then referred again to my Chancellor,
 “ and he says—I need not read this part of the letter—
 “ but he says that he has now come carefully to the
 “ conclusion, as I stated here: “While he is bound to
 “ hear judicially any case that may be brought before
 “ him, there are sufficient reasons to justify him in
 “ refusing a licence when the divorce has been granted
 “ elsewhere on grounds not recognised in the English
 “ Divorce Act.” And he tells me he shall therefore so
 “ act in future. I only wish to say this (because I wish
 “ to confine my evidence to this particular point—the
 “ liability in respect of taking marriages of divorcees), I
 “ want to say just this. First of all, it is felt by a great
 “ many of the clergy to be a very serious grievance that

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they are obliged to marry anyone who has been divorced. It is almost unanimous, I think, the feeling that the guilty person in a divorce case ought not to be married in church, albeit if by the Divorce Act the guilty person is able to force such a marriage if any clergyman can be found to do it. But if the law were to go further, and to extend the grounds on which divorce is given, and if, further, the law is, as my Chancellor, Mr. Kempe pronounces it, and a clergyman is now bound to take such a marriage, and the only way in which I can help him is by vetoing a prosecution which may be brought to bear upon him in the Ecclesiastical Courts, then I can only say that the relations between Church and State will be strained to their very last possible point. I do not hesitate to say for myself that the conclusion which I have been coming to for a long time, a conclusion which many others besides myself have come to (it is not a conclusion which will be very palatable to every one, but it is a conclusion which I have seriously come to) that the only final solution is to be found in universal civil marriage, the religious bodies being free to lay down their own rules with regard to the bestowal of the Church's benediction.

21,112. I might supplement by suggestion your two cases of divorce which you mentioned—one American people and the other Ceylon people—by the case of Scotland. I dare say you know that divorce can be obtained there by domiciled Scotch people on the ground of malicious desertion alone?—Yes.

21,113. What you have been saying, I take it, would apply very forcibly to that class of case?—I think so.

21,114. If one of those parties desires afterwards to be married in England, it is analogous to the two cases you have given?—It is.

21,115. That might very frequently happen?—I have not myself come in contact with it, but I have no doubt it might happen constantly.

21,116. I mean there is a ground there which at present is not recognised as a ground in this country?—True.

21,117. How does what you have been good enough to put before us bear upon the position in case the English Divorce Act extended the grounds (a new Act extended the grounds) to such cases as are at present recognised in some other countries; for instance, to take the concrete case of malicious desertion?—I venture to think it would so strain the relations between Church and State that you would have an absolute refusal on the part of a great number of the clergy to take such marriages under any circumstances whatever. It is held that while the essence of marriage is in contract, the blessing of the Church ought not to be asked for in cases where the divorce is granted on grounds which apparently are not recognised in the Word of God at all—in the Bible—and have never been recognised by the Church as a divine society; and therefore the clergy generally, if they were asked to take marriages, if the grounds of divorce were to be extended, I venture to say they would absolutely refuse—the great body of them.

21,118. I think that is really all you wanted to put before us?—That is all.

21,119. May I sum it up in this way: the position that the Church would be placed in, if divorce was granted on the grounds which they conscientiously think ought not to be permitted?—Yes.

21,120. (*Judge Tindal Atkinson.*) Only one question, my Lord. It was said yesterday that the Church ceremony makes it a spiritual union, and therefore, should the innocent party in a divorce be deprived of a spiritual union which would not exist if the marriage were only civil?—I again want to repeat what I said; that to my mind the essence of marriage is in contract, and I recognise a marriage, when it is legally done and when the contract is completed and completed entirely; and that being the case, I think that the religious bodies ought to be able to lay down their own laws with reference to the giving of the benediction after the contract.

21,121. (*Sir Lewis Dibdin.*) My Lord, it would be a mistake, would it not, to suppose that the nature of the marriage depends on whether there was a religious ceremony or not?—Entirely

21,122. That has always been the view of the Church of England, has it not?—I think so, quite.

21,123. It does not depend on whether there is a religious ceremony?—No, not at all.

21,124. But on the contract?—But on the contract. May I give an illustration. I was in India three or four years ago, and I remember it was impossible for a clergyman to be found to take a marriage, and it was done before a civil registrar, and then a licensed lay reader would go to the church and have some prayers with the Bishop's approval. I remember an occasion when it was the rainy season and the clergyman could not pass into that part. That illustrates what I say; that it is a civil contract.

21,125. Is there any case where a clergyman has been successfully prosecuted for refusing to marry a divorcee?—No, I am not aware of a case.

21,126. Is it quite clear that the clergyman is bound in the way you suppose?—I can only act as I am advised. I have read the letter from my Chancellor with reference to the law.

21,127. You have had great experience in these matters, and I know your view will help us. Is it not part of a larger problem as to how far a clergyman is bound to marry with the Church services persons who, for instance, are non-Christians, or persons who are, as in this case, divorcees?—Yes.

21,128. Persons who somehow or other, from their positions or relations, do not come within the words of the service—if I make it clear?—Yes.

21,129. Is it not part of that larger problem?—I quite agree; it is part of the larger problem.

21,130. Has it ever been held—for instance, a Jew marrying a Christian—has it ever been held in the courts that a clergyman is bound to marry those people?—I am afraid, Sir Lewis, you are more of a lawyer than I am.

21,131. My Lord, you will forgive me, but I am bound to put what I want to put in the form of a question?—Yes.

21,132. Is not the difficulty that has arisen over the whole of this subject based on this: that until a certain date—about 1836—there was no way of marrying in England except by a Church service?—Quite so.

21,133. Leaving out Jews marrying Jews, and Roman Catholics and Quakers, and a few subordinate sets of people?—Yes.

21,134. But speaking of the nation as a whole, there was no way of legal marriage in England except by a Church service?—So I have understood.

21,135. And the liability of the clergy since—or the law—has not been changed since the Civil Marriage Act?—Yes.

21,136. Therefore, it is argued, is it not, that whatever was the obligation of a clergyman before the Civil Marriage Act remains his obligation now?—That is the argument in Mr. Kempe's letter to me.

21,137. But that, I think, has never been sifted in court, has it?—No, I am not aware that it has.

21,138. You will agree that the service itself contains many statements irreconcilable with the view that persons such as you are mentioning should be married by that service?—Yes.

21,139. And I suppose an argument might be founded on that incompatibility of the service?—I should certainly argue it.

21,140. That it cannot be obligatory on the clergyman to use a service that does not fit the parties?—It is a very strong argument.

21,141. My Lord, you have put before us what other witnesses have done with regard to the strain on the relations of Church and State which must ensue if the law as it stands remains, and still more, if the law as it would be if the laws of divorce were widened?—Yes.

21,142. The strain that exists with reference to the obligation of a clergyman to marry?—Yes.

21,143. But is not there also a great strain which must come, and which has already come to a certain extent, and must come in the event I have suggested, to a larger extent—with reference to the terms of communion?—Distinctly.

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21,144. Supposing the law were altered in the direction of allowing added grounds for divorce (the Chairman has put to you malicious desertion, and other grounds have been suggested, a long sentence of penal servitude, incurable lunacy, great cruelty, and many other grounds), supposing those grounds, or some of them, were adopted, would not the strain, not only upon the consciences of the clergy, but on the view of Churchmen generally, become very great indeed?—Almost intolerable.

21,145. Now, that may or may not be a reason for not doing it. I am not suggesting that, but that is a factor in the decision which must be faced?—Most distinctly.

21,146. What remedy do you suggest for that, or do you suggest any?—Do you mean, Sir Lewis, what remedy in the event of the law being altered in that way?

21,147. Yes?—I should maintain that the Church ought to be able in her own assemblies to consider the whole question. I am not going to suggest a remedy now, but I feel that one of the grave objections that are taken is that, when the Divorce Act was passed, although it was perfectly clear it was passed with the concurrence of the majority of the bishops in the House of Lords, it was not passed with any sort of sanction in the Church Assembly or Convocation; and if there was to be an extension of the grounds of divorce, I maintain that the Church of England and all religious bodies should be absolutely free to consider what are the steps that they ought to take to protect what they consider to be the sacredness of marriage under these altered circumstances, and I should protest against the statute law without the concurrence of the Church (and I want to claim for the other bodies exactly the same as for the Church of England) laying down particular laws.

21,148. Would not you see great difficulties, my Lord, in an Established Church refusing to marry those who the State said were entitled to marry; and, further, excommunicating those who the State had said might marry, and were legally married, in an Established Church doing that?—Very great difficulty; but if the Legislature chooses to extend the grounds of divorce in this way, we must simply face the situation and do what is exceedingly difficult for anyone to do. The Church would claim the right, under these circumstances, to lay down her own conditions. I do not hesitate to say that, to my mind, the relationship between Church and State is more imperilled by these marriage questions than by any other questions whatever.

21,149. My Lord, you have just said about the Divorce Act not having been referred to Convocation; but that was an impossibility, was it not, because the Convocation did not meet then?—Perfectly; it was not provided in those days.

21,150. And I dare say you are conversant with the Debates, and you are aware that several of the Bishops supported the Divorce Act?—The majority.

21,151. (*Lord Guthrie.*) My Lord Bishop, you attach importance, I suppose, to the marriage being treated as a solemn matter?—Distinctly; whether it is a civil or religious marriage, it is a solemn matter.

21,152. And it is a fact that, having it celebrated by a clergyman or minister, or priest, especially in a place of worship, has an effect on the masses of the people in giving importance to the marriage rite?—Yes, distinctly.

21,153. Your proposal would have a very disastrous effect, would it not, in reducing the number of cases where that solemnity could be obtained?—That is perfectly true, and I have known and faced it. I have been vicar of a parish, as the Archbishop of York was afterwards, with a very large number of marriages in it, and undoubtedly it would very largely reduce the number of weddings.

21,154. Was that at Portsea?—At Portsea. Very largely reduce the number of weddings; that is why I say what I propose would be unpalatable; but I might say I have talked this matter out with the late Bishop Westcott, and he came to the same conclusion that I did—that we shall have to come one of these

days to universal civil marriage. There is no other way that I see out of this extraordinary complication caused by the Divorce Act.

21,155. But you do recognise that there are a very large number of people who have clearly no church connection; they are nominally Methodists or Presbyterians or whatever it is; in a large number of these cases there would be no church ceremony whatever?—Perfectly true, and I regret it; it is only because of the choice of evils that I say that.

21,156. Now, Bishop, why cannot it be met by a protecting clause which would prevent the distinct situation you have put, and exempt clergymen from either marrying in the case you object to, or admitting to the privileges of the Church in cases where you think privileges should not be given?—I have no objection if that can be done; whether it can be done the Commission must consider.

21,157. If it could be done, that would void the risk?—Yes, I admit if it could be done in a way to protect ministers of religion.

21,158. Would your objection to marrying a divorced person who was innocent apply in a case where in a foreign country (a country outside England) a wife had got divorced for adultery alone; would you equally exclude her?—That raises rather the general question on which I should rather, if I may, be excused from giving evidence. I want to confine my evidence to this particular point.

21,159. But you would cover that case?—I should cover that case, but I wanted not to give evidence on that particular point.

21,160. No, I am not asking that, my Lord, in the least. Do you know whether in the Scotch Episcopal Church there has ever been a refusal to marry an innocent person who has divorced her husband, or a man who has divorced his wife for desertion?—No, I have not heard it.

21,161. (*The Archbishop of York.*) With regard to the suggestion made that there might be a protecting clause to protect the conscience of the clergy, does not the further difficulty remain that if there was any protecting clause some clergy might refuse to avail themselves of it, and celebrate marriages of the kind of which you have been thinking?—If it were done to that extent as you suggest, it would be, I am perfectly certain, a very serious evil indeed; I mean so serious, that if some of the clergy were to marry persons who were known to be divorced on grounds which most of us would hold to be invalid, or insufficient for divorce, I am quite certain there would be such a strong feeling in the Church of England—so utterly strong a feeling—that again I say the relations between Church and State would be very much imperilled.

21,162. So that really the strain would not be removed by merely a protecting clause protecting such clergy who did not see their way to celebrate such marriages?—It would not be an adequate protection.

21,163. And would you say there was not only the conscience of the clergy to be considered but the consciences of the laity?—Distinctly.

21,164. And would not you say that a clergyman refusing to celebrate such marriages would give such offence as to make his position in his church very difficult?—Perfectly true; in this Hertfordshire case the clergyman solemnised the marriage, but gave very dire offence to some of his people by doing it.

21,165. So I may take it that the protecting clause, as you have suggested, would be only some measure, but not an adequate measure, of relief?—Yes, I agree to that.

21,166. With regard to civil marriage being in all cases required, would you see any objection, if the law so provided, to it being sufficient that there should be a representative of the State present at the marriage, and that the clergyman should be entirely free to do or not as he pleased, about the religious service?—I do not think I quite clearly grasp your point.

21,167. I want to get it clear what you mean by universal civil marriage. Do you mean it should be necessary in all cases for the parties to go to the

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registrar's office?—Well, or before the registrar in any way.

21,168. But there would be no objection, in your view, to there being a representative of the State, or the registrar, present in church if a marriage is celebrated there?—I think that is a matter for the State. I think the matter for us as the Church to lay down is to say that the Church as a religious body is to lay down its own rules with reference to the benediction to be given to marriage; and I think everything else is a matter, so to speak, for the State to adjudicate upon.

21,169. I am considering the case you have put of the very large number of persons wishing naturally to be married in church; and if they were obliged to go to the registrar's office, they would be unwilling to have any further ceremony in church. If the ceremony could go on as before in church, but there was either a representative of the State present as witness, or the clergyman was regarded for civil purposes as the minister of the State, the difficulty of large numbers of persons not having a religious ceremony of marriage would be met?—Yes, it would be met, I admit; but would not there be almost greater difficulties? How are you to draw the line? Is the clergyman to say in certain cases, "I will," and in certain cases, "I will not"? I am not quite clear. If the civil marriage is to be in church in the presence of the registrar, and that is considered to be a civil marriage, it seems to me we shall get into very serious difficulties as to refusal of the clergy to take these civil marriages in this case or that case. I am afraid I see more difficulties in that way than I do simply by having a clearly drawn line between the civil marriage and the religious marriage, the civil marriage being the contract and the legal marriage, and the religious marriage being the church's benediction given after the contract. I am afraid that while I should like, if it were possible, to do as you suggest, there are difficulties in the way.

21,170. (*The Earl of Derby.*) My Lord, you suggest that all marriages should be first of all a civil contract, as you say the essence of marriage is contract?—Yes.

21,171. They would then be regarded simply as civil contracts?—Civil contracts.

21,172. If they were regarded as civil contracts, do not you think that would mean undoubtedly that they would have to be treated as civil contracts just in the same way as other contracts are, that either side breaking the contract, the other would be entitled to relief, and that further facilities would have to be given—at assizes or some means like that—for dealing with such breaches of contract?—I should hardly have thought that was the necessary consequence. I believe that civil marriage is very common on the Continent of Europe generally, and I believe in such cases it is considered a great deal more than an ordinary contract. What I mean is, there are only certain recognised conditions by which that contract can be set aside, whereas in the ordinary case of a contract, the two contractors have simply to meet and agree to put it aside. In the case of an ordinary contract, it can be put aside by some agreement without going to the court at all, probably.

21,173. But in a case where only one side wants to put aside the contract and the other does not, you have to go to the court in that case?—Yes, in such a case you would have to go to the court.

21,174. Then would you not in this case have to take it as a civil contract just the same as any other contract?—I venture to think it is quite possible for the State so to legislate as to make it clear that it is an exceedingly important and solemn contract and cannot be treated like an ordinary contract. That is my own impression. That is a matter, I think, within the power of the State completely.

21,175. You do not think the State in dealing with it and making it a civil contract would give further facilities for divorce?—No, I do not see the necessity of it. I admit, as I said before, it is a choice of evils. I have come very gradually and slowly to think that probably universal civil marriage is the best way out of

this extraordinary complexity of problems with which we have to deal.

21,176. But it seems to me you would bring the Church much more into conflict with the State by civil marriage than it is at the present moment?—Well, possibly I may.

21,177. There was one curious expression in the letter of your Chancellor, "A foreigner who marries in England owes allegiance to our King." Is that so?—Yes, I understand so; to the laws.

(*Chairman.*) While in the country you submit yourself to the laws.

(*The Witness.*) That is correct law, I think.

(*Chairman.*) If you go into a country, you are subject to the laws, and in that sense you owe allegiance to the King.

21,178. (*Sir William Anson.*) Bishop, I understand you to say that even with regard to English law and marriage of divorced persons which takes place in England, the protection of the Divorce Act is insufficient?—Yes.

21,179. That is to say, the forced loan of his church by a clergyman who disapproves of the union is very offensive?—Oh, most offensive.

21,180. And I take it, if we had a protecting clause such as Lord Guthrie has suggested, you might get something of the same sort of difference; two clergymen in adjoining parishes, one of whom did and one did not avail himself of the protecting clause, and you might get disunion in small areas which would be detrimental to the general work of the Church?—Yes, I think it is very important this should be understood, that it is not merely a matter of protecting the clergy but of protecting the laity as well, and you have to take into consideration the feeling of the laity as well as that of the clergy.

21,181. And with regard to the foreign divorces, that has introduced an entirely new element?—Absolutely, yes. I never heard of it until these cases.

21,182. What do you say of the Chancellor not granting licences in such cases without consideration. That is a tolerably universal rule, is it not?—Yes, I believe so.

21,183. And with regard to the requirement to marry by banns, you could interpose in any ecclesiastical proceedings?—I could interpose with a veto; that is all.

21,184. But with regard to any proceeding in the Common Law Courts, you could not?—No, I have no power at all.

21,185. And that is a matter which is still undecided?—Yes.

21,186. Now as regards the civil marriage; is there any good evidence that before the middle of the 18th century the presence of a clergyman was necessary—before Lord Hardwick's Act?—I am afraid you go beyond me there.

21,187. At any rate, in the mediæval Church the civil ceremony was essential and the Church service was desirable?—Yes.

21,188. So that your proposal would be the recurrence to ancient law and practice?—Yes, largely.

21,189. With regard to the law of the Church; your Chancellor said that the law of the Church was indistinguishable from the law of the land. Is there any law of the Church against divorce *a vinculo* or against remarriage?—No, except that the form of the marriage ceremony evidently assumes there will be no divorce.

21,190. It contemplates continuance?—Yes.

21,191. But the Canon which gives authority to divorce *a mensa et toro* practically empowers the court to release from the obligation of the marriage contract?—Yes, I think so.

21,192. So that it is a divorce in every sense except the right of remarriage?—Yes.

21,193. And the Canon clearly contemplated the right of remarriage, did it not, because it put the parties under a bond not to remarry?—Yes.

21,194. Therefore, the assumption was that they could remarry. Then with regard to the remarriage after Act of Parliament; have you any authority for any objection by the Church as a whole against such

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remarriage?—Do you mean remarriage whatever the grounds, or remarriage only after adultery?

21,195. I am taking the case of what frequently happened in the 18th and the beginning of the 19th century; that is to say, parties divorced by Act of Parliament, and the guilty parties remarrying?—In every case for adultery, if I am not mistaken, was it not?

21,196. Yes. Is there any evidence that the Church took any exception to remarriage in those cases?—No, I am not able to say that there is.

21,197. There was rather a remarkable episode at the beginning of the 19th century?—What was it?

21,198. It was a case in which Lord Auckland, I think, moved it should be a Standing Order of the House of Lords, that in these private Acts a clause should be inserted that the parties should not remarry, and the Archbishop who voted for this clause used these rather remarkable words. It is in Cobbett's Parliamentary Debates. "The Archbishop discussed 'the ancient history of divorce.' His Grace then 'proceeded to the religious view of the question and entered into the history of the customs of the Western world on the subject of marriage, which until the Reformation was considered here indissoluble. After that great event persons were set at liberty in cases of adultery, and subsequently the remarriage of those divorced by Act of Parliament took place. With respect to his opinion and that of his learned and reverend brethren on the Bench, his Grace observed that by the Divine law there was a liberty to marry again, or else that reverend Bench would unquestionably before now have interposed.'" He voted for the proposed insertion of the clause, but he laid it down as his opinion, and that of the whole Bench of Bishops, that the remarriage of guilty persons was permissible by Divine law.

(*The Archbishop of York.*) Who was the Archbishop?

21,199. (*Sir William Anson.*) It was in 1809; I think it was Manners-Sutton?—I am not familiar with that, but I am certain I am speaking the mind of the bishops and clergy and Church generally when I say that the marriage of a guilty person in church is contrary to the whole feeling of the Christian community.

21,200. I quite realise that, but the point of my question is, is this a permanent view, or may not the opinion of the Church change from time to time, if you leave it to be a matter of Church rule whether a man should be entitled or not to the blessing of the Church on his marriage. You hope at present the Church will always be of your opinion?—Yes, I hold that if they want to be married again after divorce they should go to a civil registry and nowhere else.

21,201. You understand it is a matter of great importance to the laity to be sure of the matter?—Yes.

21,202. Supposing adultery were the sole ground of divorce either in the case of a husband or a wife, and that a statute forbade the guilty party to remarry, would that be satisfactory as between Church and State?

(*Witness.*) I am going to ask the Chairman if that is not going into the general question which I deprecated.

21,203. (*Chairman.*) I understood you only wanted to point out the difficulty that had to be met with regard to the clergy?—Yes.

(*Sir William Anson.*) I thought we were discussing the effect of the proposals in the relations between Church and State, and I suggested what I thought was a difficulty.

(*Chairman.*) If you can keep it to that.

21,204. (*Sir William Anson.*) I will not pursue the question, my Lord, but I should like to ask the Bishop this question because of his large experience among the poorer classes. Do you think, if you make civil marriage the only form of marriage, that you would increase the inclination of the State to enlarge the grounds of divorce? I mean, have you no fears on that score?—I am afraid that is a matter I must leave to the State. I again say I have come to this question of civil marriage as a choice of evils. It might be it would lead the State to consider that there ought to be

further grounds of divorce. It is not my wish; it is exactly the other way.

21,205. You would regard the civil marriage as sacred and binding?—Just as sacred; exactly as sacred.

21,206. The only question is whether other people would so regard it?—Yes, quite so.

21,207. We have been told that in poorer districts there is a large class of persons who are not religious exactly, but who have, as has been said, the fear of God before them, and attach great importance to the sanctity of the marriage tie, to a large extent because the ceremony takes place in church. Have you no fears on that score?—I am quite certain, if there were a universal civil marriage, that the clergy would do their utmost to persuade people to come to the church, or whatever religious body they belonged to, to receive its blessing on their marriage; and my impression is that very largely it would lead to deeper solemnity and to a deeper appreciation of marriage than the present system.

21,208. And in any case you would not have the civil marriage treated as an ordinary contract?—Not a bit.

21,209. But it involves liabilities of quite a different character?—I have never heard of a country where marriage is treated simply as an ordinary contract; I believe it is universally treated as quite a separate and distinct thing.

21,210. So you would have a contract to which you would attach all the solemnity of a marriage in church?—Yes.

21,211. And the blessing of the Church invoked on such persons as the Church—not the individual clergyman?—Not the individual clergyman; I emphasise that.

21,212. Then you would impose ecclesiastical discipline?—Distinctly; I think it is absolutely essential that it should not rest with the particular clergyman, but with the laws of the particular community.

21,213. Or with the particular diocese?—No.

21,214. You would have it as part of the law of the Church?—Yes.

21,215. Enforceable by ecclesiastical discipline, that where the Church said the blessing should be pronounced, the parties should have a right, as members of that Church, to the blessing?—Yes.

21,216. (*Sir George White.*) Following the last question, my Lord; I think I understood you to say, in answer to Lord Guthrie, that you felt every clergyman ought to be relieved of any bond to solemnise a marriage, and that from that point of view he might make his own rules?—No, I should be sorry to say to make his own rules; to be bound by the laws of the community to which he belongs. I thought I emphasised that in my answer to Sir William Anson.

21,217. Yes, but I thought there was something inconsistent between the answer to Lord Guthrie and the answer to Sir William Anson?—I hope I have made it quite clear in my answer to Sir William Anson.

21,218. Then supposing the rule of the Church did not agree with the law of the State in that case?—Well, as I said, I think there must be universal civil marriage, the religious bodies being free to lay down their own rules. I want to claim the same religious freedom for all other religious bodies as I do for the Church of England. What I ask is that if there is a universal civil marriage, that the Church of England and all other religious bodies shall have perfect freedom in stating what marriages are those on which they authorise their ministers, whatever they may be, to pronounce the blessing of God.

21,219. Is it not rather that you claim the same freedom for the Church of England as other churches actually possess; is not that rather the way in which it should be put?—I can only say that the Church of England is what it is not only by law, but it is a religious society of men who are bound together with religious sanction; and you cannot permanently, whether the Church is established or disestablished, go against the moral feeling of that community; and if the feeling of that community is outraged, as it certainly would be if the grounds of divorce were extended, and

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the clergy were compelled to take the marriages—you cannot permanently go against the religious feeling of that community.

21,220. I quite agree; but does not that drive you into the position of passive resistance against the law of the society, or a claim to be free, as a Church, from the State. Are not you in your present condition taking the State and the Church, as married people take each other, for better or for worse?—I am not aware, though I am not a Scotchman, that in Scotland there is found such a great difficulty in the State allowing the Church very considerable freedom, although it is established. The Established Church of Scotland is able to lay down its own rules and regulations, and I do not see why there should not be the same liberty in the Established Church of England.

21,221. But surely you cannot have the Church bound to the State unless that Church is willing to submit to the laws of the State, unless those laws go contrary to its conscience. And then there is one remedy only as far as I can see. You are prepared to take that remedy rather?—I am prepared to take that remedy rather than to have my conscience outraged.

21,222. Quite so. I entirely appreciate that position. I gather you do not contemplate the universality of civil marriage as an ideal condition of things?—No, certainly not; not ideal; and I hope those who are married with the civil sanction will, in certainly the great majority of cases, go to a Church of England church, or the church where they worship, and ask God's blessing on the union.

21,223. (*Mr. Spender.*) May I ask one question. Perhaps it has been asked before. Would refusal to marry in church under these contemplated conditions be equivalent to excommunication if the parties were members of the Church?—No, I do not think anything can be said to be equivalent to excommunication. Excommunication is a very solemn thing.

21,224. But in the precise sense of the word—exclusion from communion afterwards?—Certainly, exclusion from this particular right, the right of marriage; but there is no reason why they should not on penitence be admitted to communion afterwards.

21,225. That is the point I wish to get at. If not repentant, *ipso facto* that would be a ground for exclusion?—I do not hesitate to say that if a clergyman in my diocese was to repel from Holy Communion a man who had committed adultery and married again, I should support him completely. But if, on the other hand, that man repented and showed evidence of his repentance, I should then authorise the clergyman to admit him to communion.

21,226. But how could he in that case show evidence of repentance except by abandoning the partner to whom he was married under civil law?—I think that is entering into a further and very difficult question, into which I do not want to enter fully to-day; there are means by which a layman would show his penitence. I have one or two cases in my mind; but I think it is a very wide question, and I would rather not enter into it to-day.

21,227. Well, I do not want to press the matter, but it is not only the marriage, but the consequences that follow after?—You see it involves the whole question of the discipline of the Church, and a very difficult one.

21,228. And that might bring in a very acute form the collision between Church and State, as Sir George White pointed out?—Yes.

21,229. (*The Archbishop of York.*) I should like to ask one question, by the kindness of the Chairman, which I omitted to do arising out of your answer to Sir Lewis Dibdin. Is not there a distinction, which it is necessary to keep in view, between marriage, such as was always taking place between persons whether or not contracted in Rome, before Christian contract existed, and that which has always been called Christian marriage. Is not the view of Christian marriage which has been held at one time universal in the Church, and that by a very large section, that while contract is essential to the marriage and the priestly benediction is not essential, the contract in the case of Christians means a contract that they will

mutually enter a certain status, and when they contract to enter that status they are bound by the obligation of that status as long as it lasts—for life?—Yes.

21,230. Would that be a more correct way of putting it than saying merely, the essence of Christian marriage consists in contract?—You have put it, I think, quite correctly; but still, I think, you would not impugn the general statement that the essence of the marriage of all kinds is in the contract.

21,231. Yes, the essence of marriage of all kinds is in the contract, and it is for the State to lay down the conditions on which that contract is to be made and broken; but the Christian contract has always been considered as a state?—Yes, it is a contract that you will abide as a Christian, in the marriage state prescribed by Christianity.

21,232. (*Chairman.*) Perhaps I might refer you to a passage that deals more or less with the question put by Sir William Anson. I read it from a book to which I have been referred—Mr. Watkin's book. Do you know it?—Yes, I do.

21,233. It is at page 99. "The passages hitherto quoted are binding evidence that the benediction of the priest was an ordinary accompaniment to Christian marriage. It was not, however, for many centuries required by either the ecclesiastical or the secular law as a condition of valid marriage." Then he amplifies that at page 101, "Summing up the evidence of the first thousand years of Christianity, it may be said to be sufficiently clear—(1) That where a marriage had been celebrated by Christians with the usual civil forms, there being no bar, which by Christian rule, would hinder the marriage, it was accepted as valid and no priestly benediction was required as a condition of validity. (2) That, notwithstanding, from the earliest age of Christianity the priestly benediction was a usual accompaniment of marriage between Christians. The practice of the past nine centuries is entirely in accordance with this evidence. It is unnecessary to follow it in detail, but it may be briefly stated that prior to the Council of Trent (A.D. 1545 to 1563) the priestly solemnisation was not required by the Canon law as a condition of validity, and that where, as the result of the Council of Trent, this requirement is now made, it is commonly understood to be so made under obedience to the decree of the Council as a positive ecclesiastical regulation. At the present day in the Latin Church marriages which have been effected only by consent of the Copula are still held valid on occasion in those countries where the decrees of the Council of Trent have never been published. The same has been always the case in Scotland. It was no less the case in England till the passing of Lord Hardwicke's Act in A.D. 1753. Since, therefore, in the history of the Christian Church it has been usual, when occasion required, to admit marriages as valid which had not been solemnised with the priestly benediction, and since also there is no requirement of such benediction in Holy Scripture, we conclude that solemnisation with the priestly benediction is not of the essence of Christian matrimony." I do not know whether that represents your view?—It does entirely.

(*Chairman.*) I think, Sir William, that puts what you intended?

(*Sir William Anson.*) Yes, entirely.

(*Chairman.*) There is a lot of discussion, but it is summed up in that way.

21,234. I should like to ask two questions; whether you would anticipate any difficulty in the view you have represented for maintaining the connection between Church and State?—I do not think it is at all impossible, but I honestly think it is difficult. But I do not think it is impossible at all.

21,235. The other point is this, which is suggested by Sir William Anson's questions to you, I think. Would your view be that those who were members of the Church would all be bound by one law, and that there would be no possibility of difference of opinion in the Church? I might say why I feel a little difficulty

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in following your views about that. It is suggested that views, even in the Church, might change?—Yes.

21,236. For instance, we had the Reformation of Cranmer put before us, which expresses quite different grounds of divorce to those at present, and there might, therefore, be changes of opinion, and there might, it seems to me to follow, be differences of opinion in the community, say, at the moment, one body taking one view and another taking another. Would not the Ecclesiastical rule, such as you have suggested, tie everybody who is a member of that Church to a rule they would not agree to?—Well, I should like to answer in this way, that I think it, on the whole, far better that the law of the community—of the Church—to prevail rather than the preferences of individual clergy. I see the greatest possible difficulty and

danger if every clergyman is allowed to have his own way and his own choice, and I am certain that the good sense of the community is the best protection. It may be—take the Church of England, as a religious body—that its members might come to have a different opinion to what they have to-day, but I should far rather that the Church as a body should be responsible than that you should leave it to the individual idiosyncracies of different persons, and you will get a far greater liberty, on the whole, in that way.

21,237. You do not think it might tend to split up that body if there were differences of opinion in it?—No, I think not.

(Chairman.) I think we must thank you very much for the evidence you have given here to-day, my Lord, and for the thought you have given to the matter.

The Right. Rev. THE LORD BISHOP OF BIRMINGHAM called and examined.

21,238. (Chairman.) My Lord, I think you have taken into consideration some portion, or perhaps a good deal, of what we are considering on this Commission, and you have been good enough to prepare a memorandum on some points connected with it which you are proposing to place before us?—Yes.

21,239. Perhaps I may take the first sentence as indicative of the class of evidence with which you propose to deal. You say: "The only evidence that I am able to offer concerns the view which the Christian Church as a whole, and the English Church in particular, has taken of divorce." That is the point, I think, with which you are proposing to deal?—Yes I am, my Lord. There are a great many matters of importance in this subject with regard to which I could not claim in any way to have had the sort of experience which would justify me in giving an opinion of any value. I should be dependent on the opinion of other people as to how far, for example, there was a demand for increased facilities. On those matters I should much rather listen to other people than give an opinion of my own. I offered evidence only on those matters on which I should feel for myself, at any rate, that I had some title to speak.

21,240. Then you say you suppose this—that the evidence you would offer—would have "some bearing both on the proposal to extend facilities for obtaining divorce on the basis of the statute law as it at present exists in England, and on the question whether our existing law requires amendment." Then would you kindly state the point you would desire to make the commencement of this evidence. If you would like to read?—The point as regards the divine law.

21,241. Yes?—I wished to call attention to the fact that I think is not always before the minds of those who are what may be described as laymen in biblical criticism; that the whole course of biblical investigation for many years past has tended to the point of emphasising that the mind of Christ himself was for indissoluble marriage; and that the exception in the first Gospel, which appears to be contrary to the mind of Christ, as expressed in the other Gospels and by St. Paul, was a remaining Jewish view in the Church asserting itself against the stricter law of Christ. I think it is very difficult to state too strongly that that is the tendency of recent investigation. For another purpose the other day I was going through the books which I happen to have in my library—English and German—which dealt with the matter, and they were quite unanimous. There was Dr. Plummer and Mr. Allen and Dr. Salmon and Professor Tyson, and some German authors. I looked them up in succession and they were unanimous in that view; viz., that the judgment expressed, in the passage of St. Paul which I have referred to, but have not quoted: "And unto the married I command, yet not I but the Lord," (where he expressly distinguishes the command of the Lord from his own opinion): "That the wife depart not from her husband, but if she depart, let her remain unmarried, or be reconciled to her husband, and that the husband leave not his wife." I say that this passage, with

the passages in St. Mark and St. Luke, constitute the fundamental Christian law, and the exception in St. Matthew represents a Jewish tradition which was very strongly reasserting itself in the Church. Perhaps the probability of this opinion comes out most forcibly if you look at the way in which the earlier text states the question, and the first Gospel modifies it. "Is it lawful for a man to put away his wife?" so it runs in St. Mark. But St. Matthew's Gospel modifies the question by adding the words "for every cause." You would find, I think, that almost every modern critic would say that the one is the original text and the other is a later gloss.

21,242. Would your view be that the conclusion is that marriage is by that set of references treated as entirely indissoluble?—I should say that that was the original mind of Christ, and that that accounts for the fact that the first Christian Church started out with that view with such great unanimity and absence of hesitation. I think, then, at a later time—in the fourth century, when they first became implicated in the Imperial Law, that they then found this passage in St. Matthew and began to pay attention to it, and after that it always had a great influence, and finally it was allowed to have its influence in the East and was ignored or explained away in the West.

21,243. Is your view now, as a conclusion, that marriage should be treated as indissoluble?—In the Church—yes.

21,244. In the Church?—Yes. I will not say what I think is possible in civil society, but in the Church.

21,245. I was at the moment thinking you were dealing with the Church?—Quite so.

21,246. And that is the same view held by the Roman Catholics?—Yes.

21,247. Would you say that was the view held by the great body of reformers?—I think you would have to describe a very wide variety of views if you begin to speak of the great Protestant Reformers—a very wide variety of views. That was partly due to the enormous authority—or almost preponderant authority—which some of them assigned to the Old Testament.

21,248. Of course you will understand I am only putting the question for information. The study of it is more in your line, having had time to look into them?—I am quite sure I would be right in saying you would find a very great difference of views between the great Protestant Reformers on the subject in all countries.

21,249. Taking them as a whole (I have looked at some of the passages to see if I could find them myself), did not they take the view that marriage was dissoluble?—No, I should not have said that. I should have thought it was true to say that the one passage in St. Matthew gained a preponderant attention as compared with the statements in the other Gospels.

21,250. I tell you why I ask, because one of the books I have is a book we have had supplied to us—Mr. Howard's work on the matrimonial relations—in which in one passage he says, "It is characteristic of Luther and the representatives of the more rigid tendency that rather than multiply the number of

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"admissible grounds of divorce an effort was made by "hard logic to broaden the definitions of desertion so "as to give to it a wide range without seeming to "transgress the law of scriptural authority," and then further on it says, "Only two general causes of full "divorce on alleged scriptural authority were thus "admitted by Luther and his immediate followers." There are further references in the same book to Erasmus, Zwingli, Melancthon, Luther and Monner, and it winds up thus: "All accept the two general "causes, and each admits several other grounds." The reason for asking is whether that does not indicate that these reformers treated the contract as dissoluble but dealt with the grounds on which it should be treated as dissoluble?—It certainly is the case that a very large number of the reformers abandoned the ground which had been previously held in the Church.

21,251. That is the only point I wanted to call attention to?—Yes, but the Church of England occupies a rather singular position, and I should not allow that in the Church of England the old principle was ever altered or ever abandoned.

21,252. Would that view be quite the result of the Lambeth Conference of 1888. The same book that I referred to just now of Mr. Watkins' gives, at page 486, a report of the Lambeth Conference which I should read as admitting of dissolution, but only in the case of fornication or adultery. That was a matter which I think we have alluded to?—Yes; I do not think anyone could fail to recognise that in the Church of England that exception admitted in St. Matthew has been accepted on many grounds—partly on the ground of equity—and it has been felt to constitute a great difficulty. An opinion has been often held in the Church of England to the effect that divorce with liberty of remarriage ought to be allowed on that one ground, for that one class of persons, the innocent persons in divorce for adultery. The Lambeth Conference is not a conference of the Church of England but of the Anglican Communion and admits a great variety of Churches, each of which has its own law; so any opinion expressed by the Lambeth Conference is simply an opinion, and is the opinion of a great variety of Churches. What I rather wanted to bring out is what I think is true—that opinion is tending, partly on grounds of experience, to say that that single exception on behalf of the innocent party—that distinction between the innocent and guilty person—is a distinction very difficult to maintain, and a great number of persons who were prepared, on the ground of a certain passage in St. Matthew, to say that remarriage must be allowed or tolerated in the interest of the innocent party in divorce for adultery alone—I think a great number of those people, partly on the ground of experience, and partly on grounds of biblical criticism, are abandoning the position they held, and are regarding that solitary exception as an unworkable exception. They never were prepared to extend it so as to make their view at all accordant with what common human society would ask for, and therefore they are disposed to withdraw from the position of allowing that single and solitary exception, saying, first of all, it is useless, and, secondly, that it does not appear to represent the mind of Christ, and that they think their better course is to return upon what has been commonly understood—almost always in the West and in the Church of England—to be the law of Christ.

21,253. May I read the resolution of the Lambeth Conference?—Yes.

21,254. It is, "That inasmuch as our Lord's words "expressly forbid divorce, except in the case of fornication or adultery, the Christian Church cannot "recognise divorce in any other than the excepted "case, or give any sanction to the marriage of any "person who has been divorced contrary to this law, "during the life of the other party." That is what made me ask you if there had been any general consensus of opinion in the English Church that marriage was indissoluble?—I wonder if I might ask your Lordship to substitute the words Anglican Communion for English Church. Of course, your Lordship would know that in the Lambeth Conference a very large element

is the American Church. The American Church is in full communion with the Anglican Church, but partly owing to the conditions under which the Anglican Communion in America first established itself, it has always held a laxer tradition with regard to that matter, and the same is the case with some of the colonial Churches. I do not think you could quote the resolution of this conference as at all fairly representative of the mind of the Church of England now. Accordingly I would lay stress on the existing law in the Church of England as represented in the canon; and my feeling is that opinion among us of the Church of England is more and more reasserting itself in that sense.

21,255. I pass on to ask one or two other points that lead up to the next point in your proof. Does your view apply to marriages however contracted, or only marriages contracted in church?—My view is that in the Church of England the old doctrine of the Church must be regarded as still obtaining. That is the view which regarded the presence and action of the priest in church as a very desirable accompaniment, but not as an essential. I think in the statements made about the essence of marriage lying in contract in the Christian view, you have very carefully to guard yourself; because the old law of the Church regarded a contract as valid from the Christian point of view only when it was a contract "in the Lord," as St. Paul's phrase is; that is, a contract between persons conscious of Christian obligations. I think it necessary very carefully to bring out that the Church at no period has said that a contract, for example between Jews, was a contract that was valid in a Christian sense, but only in a Jewish sense.

21,256. What I was getting at was what we have to deal with to-day. One wants to see whether the view you present would be different as to dissolubility between marriage contracted in church, or anyhow else, by registrar or a minister, not a minister of the Church of England; or contracted out of England?—I do not think, as far I know, it would be maintainable that the Church of England draws that distinction. I believe in the Roman Catholic Church the additional requirement in the positive sense of the presence of the priest and the benediction of the Church was introduced at the Council of Trent, and I think I am right in saying that quite recently in England the decree of the Council of Trent in that matter has been promulgated, and that has affected the Roman Catholic view of the validity of marriage very seriously.

21,257. I only want to get at this, whether the view that marriage should be treated as indissoluble should apply to marriage however contracted in this country?—Yes, but I think there you get to a point of very great interest, if it was contracted with the full Christian intentions; but I think that is a point which has been left out of sight sometimes. The Christian idea of the place of contract in constituting marriage has always depended on the contracting parties having the full Christian idea of what the contract involved. For example, I can conceive that in certain of the States of the United States of America where great freedom of divorce is allowed, and had seriously affected the current view of the marriage contract, that the Christian Church would say we cannot regard a contract, so very dissoluble as this, as what we understand by the marriage contract. I think it wants very careful saying that when the Christian Church laid down that marriage was constituted by contract that it was a contract between Christian persons conscious of the Christian law.

21,258. How would your view apply to the cases, which undoubtedly would be numerous in England, of persons who are not Christians at all and yet are married according to their own rites or according to the registrar's form of celebration. I mean the State must consider all its citizens?—Quite so. The early Christians regarded those marriages very largely as marriages which might be rendered Christian if the parties became Christians, but which were, so to speak, voidable. St. Paul, for example, maintains that if two parties had been married, being Pagans, and had subsequently become Christian, it was a matter of

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choice between them whether they maintained or did not maintain the marriage.

21,259. I wanted to get at this, whether the view you present at the moment is that a Christian marriage should be treated as indissoluble, but that any other marriage should be treated as dissoluble by the State, in considering the matter?—I should respectfully propose that the State would have to (taking the matter in its broadest sense) pay great regard to the fact of differences of conception. I conceive that in India the State does that. It recognises there that the marriage contract or agreement means a great many different things. Unhappily, as I should think, the modern State would have to pay regard to that.

21,260. Would you follow the views presented by the Bishop of St. Albans this morning of universal civil marriage, followed by such Church rite as might be desired?—I have later, in my proof, expressed a view about that.

21,261. Then we will come to that later on. Shall we leave that till we come to it, or would you like to deal with it now?—No.

21,262. We might deal with it now. Is it the last page of the memorandum I have?—At page 4, my Lord.

21,263. Perhaps you would read that, my Lord?—There are other matters before that on which I should like to lay some stress.

21,264. Yes, I was only thinking; would you like to pass to this point, or shall I leave it till we get to it in its proper order?—Yes, certainly.

21,265. I will leave it then till I get to it. Then, if you have the same copy of your memorandum as I have, you have practically dealt with the first page of it until we get to the bottom. You have stated already that the St. Matthew conception is treated as a later gloss on the original teaching?—Yes, my Lord.

21,266. Can you tell me where the actual texts as we have them in English come from?—Yes, I can say what the modern view is.

21,267. No, not the modern view, but what the translation is actually made from?—It is made from the Greek originals.

21,268. Are those now in existence, because there are several of the codices that are referred to in the book I have mentioned as still being in existence?—Not, of course, the autographs.

21,269. No, but what is it that our translators have made the English translations from?—Our translators made the English translation from a great number of manuscripts that existed at the time—a vast number of manuscripts that existed of very varying value, and modern investigation has gone to sift all the existing types of manuscript and arranged them in a hierarchy of values by virtue of which the Greek text has been corrected, and great pains spent to get as correct a text as possible; but I think you may say that the incorrectness of the text from which the Authorised Version was made is sometimes exaggerated. It is only in a few places that it makes a real substantial difference to the ordinary person.

21,270. Can you give me the date of the earliest manuscript that is used for the translation?—The earliest manuscript now existing would be different from the earliest one then used. They paid no very careful attention to dates of the manuscripts in the sixteenth century. The Revised Version has been made specially from the manuscripts of the fourth and fifth centuries; special attention was paid to the manuscripts of the fourth and fifth centuries. Then, also, special attention was paid to quotations from the New Testament made by writers much earlier than the fourth and fifth centuries.

21,271. Are those in existence now?—Yes.

21,272. I was trying to trace it back to the origin, but I suppose that is not possible, and has not been possible?—I think you can say that we know for certain, within any limits which matter practically, at all, what the words were written by St. Mark about the year 64 when he wrote the second Gospel, and that we also know with some degree of certainty what

the words were of, the document used in common by St. Matthew and St. Luke,

61,273. Were those written at that time or subsequently?—Well you can say that St. Mark's Gospel was written certainly between 60 and 70, and can say that the other document was written certainly at least as early as that, and very likely a good deal earlier. I am not speaking of my own opinion only, but of the convergence of opinion.

21,274. I should like to ask you whether your view of the texts you refer to in your proof, St. Mark x., verses 10 to 12, and St. Luke xvi., verse 18 (those two are set out), whether you think those texts have real reference to divorce by the authority of a State Court or to the position of a man who by the Jewish law could put away his wife as he chose?—I should have thought that they referred to what was to be the law for the disciples of Christ. Undoubtedly the idea could not be entertained that they could have become the State law at that date.

21,275. Am I right in thinking that at that time the Jewish law permitted—because we have some Jewish authorities coming—a man to put away his wife if he chose?—The Jewish law had a later and a stricter interpretation. By the stricter interpretation marriage was dissoluble only for adultery; the laxer law regarded it as dissoluble for a great number of causes.

21,276. But that was done by the man himself?—That was done by a writing of divorcement.

21,277. Given by the man; there was no court to intervene—or suit or anything of that sort?—Well, my impression is that if a man had divorced his wife for any cause that was not regarded as valid, the local courts would have intervened; yes, I think so.

21,278. That might be possible, but as a matter of fact, as far as I can follow, there was nothing done at the beginning by way of a suit or anything of that kind?—It was the initiative of the individual. The phrase was that So-and-so has divorced So-and-so.

21,279. I ask because the difficulty I have had in looking through your proof and these texts is that there is nothing said about the position of the woman in those texts. She has no rights whatever under those texts?—My impression is that neither the man nor the woman has power under the strict law of Christ. I should have supposed that where the remission or relaxation was introduced in certain Jewish communities, which is expressed in the text in St. Matthew, that it would fairly certainly give a remission to the man which it did not give to the wife, because such was the Jewish practice.

21,280. If you look at those two texts you have set out here there is nothing said as to the wife. She can apparently do nothing?—The object of those sayings is to take away from the man the right that he had under the Jewish law and was not to have under Christian law.

21,281. It is a question of construction; the words are "whosoever shall put away." Is that strictly applicable to a case where there is no putting away but the person who is in fault has gone, and is living with someone else. In that sense there is no putting away, and the position is one in which there is nothing to be done unless the parties are in some way freed. Might I say what is passing through my mind, is the difficulty of the present day in applying these texts to certain positions we have had of a person disappearing to America and setting up a new establishment. The person left behind has no putting away to do at all. There is nothing in that suggested by these texts, and one wants to see how far they are applicable to divorce questions as they arise at the present day?—The earliest of all our texts is the text of St. Paul, which he gives us definitely as the word of the Lord that: "The wife depart not from her husband, but and if she depart, let her remain unmarried or be reconciled to her husband; and that the husband leave not his wife."

21,282. Is not that a passage which goes on to say: "if the unbelieving depart let him depart. A brother or a sister is not under bondage in such cases"?—Yes, St. Paul would not have regarded the Christian law of marriage as applying to pagans—distinctly.

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21,283. This is what I have understood as one of the foundations of the Scottish law?—I do not quite understand.

21,284. Well, you know, in Scotland the law allows and justifies, apparently on scriptural grounds, divorce on the ground of desertion, and I have always understood in the course of this inquiry, since our attention has been called to it, that they rely very much on this passage in the Epistle to the Corinthians —

(*Lord Guthrie.*) Yes, the Westminster Confession founds scriptural right to a divorce on this passage in 1 Corinthians and other passages.

(*Witness.*) I venture to think it would have to rely on other passages and not that passage.

21,285. (*Chairman.*) What I am wanting to get at, my Lord, if I am not pressing it unduly, is this: the applicability of the language used in the texts to which you referred, where there is no putting away, but where one of the persons wickedly departs and goes off with someone else. The difficulty I have is in reading those cases into these words at all, though I can read them into the cases where a man turns his wife out of the house for one cause or another?—The Christian Church came out into a world singularly like our world—a very modern world, where the wildest licence of divorce was existing; it came into a modern world and a world in which the whole discussion of the subject of divorce, very much on modern lines, was familiar, and it had no doubt at all about its mind. The Christian Church based itself on this principle of the indissolubility of marriage; it had no doubt about it, and the whole creation of the new Christian society was on that basis. The idea of a married woman going and living with another man was extraordinarily familiar in the society of the world into which the Christian Church came out.

21,286. The only difficulty I have is in finding what you say in the texts to which you refer?—I think all texts of the Bible have to be taken in accordance with the principle of the binding and loosing authority which belongs to the Church. I should have supposed that the text in the first Corinthians bears directly on the situation you refer to when it says that “the wife depart not from her husband, but and if she depart let her remain unmarried or else be reconciled to her husband, and that the husband leave not his wife.” I should have thought the whole of that chapter does imply that under no conditions was marriage between Christians dissoluble except by death, and that it was written for Greek-speaking people living in Greek society where the kind of incidents which you, my Lord, have referred to, were extremely common and familiar.

21,287. Then I see in your proof that “the primitive Christian Church apparently took no notice of the exception, and maintained the absolute indissolubility of Christian marriage. Later there was difference of opinion. Finally, the East admitted the exception.” That I take it is the Greek Church?—Yes.

21,288. “The Western Church maintained the absolute indissolubility and refused to recognise divorce in any case except in the case of separation, without liberty of re-marriage.” The position is still the same in the east. We have the law of the Greek Church before us, and I believe that still admits that, and other causes too?—Yes.

21,289. They never did, in fact, recognise indissolubility?—No, not after the fourth century, I think. They have always admitted exceptions. They retained a good deal of the traditional language about indissolubility though they admitted inconsistent exceptions.

21,290. The present difficulty is, you have the East admitting that exception (and I think desertion too, and five or six causes), and you have England admitting one exception as at present?—Not the English Church.

21,291. No; England. I did not use the word church?—But I should say if you have in view the State laws you would have to make a much more enlarged statement.

21,292. Well I will confine it to the English law. The Scotch law admits it too, and apparently the Scotch Church admits it, and the Roman Catholic Church

admit none. Apparently we have four different results at the present time?—I do not quite see how you say four; I should have thought you might say 40. If you begin to take into account State laws you would find a somewhat different law in almost every State of Europe. The Roman Church, for example, would be faced with almost an infinite variety of State laws. I think we must keep distinct the Church law and the State law. Even with regard to Christian bodies, taking them the world over, there would be considerable variety of views.

21,293. The reason I asked as to the different views is that I have found one summary which maintains seven different constructions of these points we are dealing with. It is in a great speech made by Mr. Gladstone opposing the Bill of 1857. I should like to ask you about it, because he gives seven different constructions, and says they are all supported by different competent men, though he does not say he agrees that they are all sound.

(*Lord Guthrie.*) Constructions of scripture.

21,294. (*Chairman.*) Yes, constructions of scripture. Might I read that, because it is one of the difficulties I feel. He said this. I am taking it from his speech in 1857, and we know he opposed the Bill very strongly. “Now it is not to be dissembled that a very great diversity of opinion prevails with respect to the true construction to be put on scripture in this matter. There are in the first place those who think that the prohibition of divorce—that is divorce carrying with it the power of remarriage—is absolute. There are those who think that there is in scripture permission to marry after divorce in case of adultery alone, but that the permission is limited to the innocent man, and that there is not given to the woman under any circumstances liberty to marry. But I believe to be the most ancient opinion of the Christian Church after the old law, as I shall call it, of indissolubility. There are others who go one step further. They give liberty of divorce and remarriage both to the innocent man and to the innocent woman. There are others who give liberty of divorce after adultery to both parties if they are innocent, and to the man although he is guilty. There are others, and that is the description of the Scottish law at the present moment, who give it to both, whether innocent or guilty, provided there is no inter-marriage between the guilty parties. There is another class that permits the inter-marriage of the guilty parties, and there is another that considers that divorce may be permitted not only for adultery but for other causes. I have given seven different constructions of scripture on the point, all of them having some champions and advocates. I do not say they are supported by sound argument. We have many causes far more fatal to the great obligations of marriage (than adultery), as disease, idiocy, crime involving imprisonment for life, and which if the bond be dissoluble might be urged as a reason for divorce.” That is the passage that made me want to ask what were the different constructions that could be put on this?—I am afraid if you ask me how many constructions are to be put on an important passage of scripture you would have to give an almost infinite number; when a matter becomes a matter of eager contention the number of views put forward become almost infinite. All a man can be responsible for is trying either to find what is in his own judgment the true construction, or what has, as a matter of fact, been the mind of such and such a particular religious society.

21,295. I see he finishes the passage in this way: “With respect to the great question of the indissolubility of marriage, let me observe we had too much dogmatism, but the length to which I would push the argument is this, that the Gospel was intended to work out a certain great and provident result, and the mode of attaining this result—the most blessed and precious for mankind at large was in the wisdom of God not by means of commands and forms in rigid shape, but rather by the infusion of a new spirit into the precepts of the law, a spirit that pervaded every artery and vein of society, raised its tone from the degradation of heathenism, abolished the cruel sacri-

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"fice of human life, abolished the exposure of children, abolished polygamy, abolished slavery." It would rather seem that he was dealing with it rather from the spirit than the letter?—I should differ from that. I should venture to think there are certain points on which everything depends on law—very few points. I should have thought that the Christian Church, certainly for the first few centuries, maintained the view that theirs was a communion of persons prepared to abide by certain very difficult precepts, and in particular that it was a communion of persons prepared to abide in a society based on this precept of indissolubility—a precept so difficult that when our Lord stated it the disciples said: "If the state of a man be so with his wife he had better not be married." And my opinion is that that is the only ultimate basis on which Christian society can repose, and after all vagaries and wanderings we come back to that, and are confronted with that. I do not say it is a possible law for any particular State, but the Christian law, which the Christian Church has to maintain, and which the English Church has always maintained in its letter as a written law, though English churchmen have been very often unfaithful to it.

21,296. You go on in your proof, "This Western tradition" —?—"This Western tradition representing truly, as I believe, the intention of Christ, is embodied in the canon of the Church of England 107, entitled, 'in all sentences for divorce (that is 'a mensa et toro) bond to be taken for not marrying 'during each other's life,' and in the solemn pronouncements in the marriage service, 'till death us do part,' 'those whom God hath joined together let no man put asunder.'" I believe that simply represents the old law.

21,297. Then you proceed to discuss the recent statute —?—Might I say one word about that canon? It ought to be said that that canon was passed in full view of the old principle which talked about divorce but had no idea at all of divorce as admitting to remarriage. I should not admit for a moment that that canon suggests that the parties would be *ipso facto* in a position to remarry except so far as they give an additional bond.

21,298. Then you refer to the recent statute laws, that is the Act of 1857, and you proceed in reference to the authority of St. Matthew's Gospel, and you say, "That has produced a considerable body of opinion in favour of some relaxation of the old law," and then you refer to what I have already had from you I think, the Lambeth Conference of 1888. No action has been taken since the Conference of 1888 has it, I gather from what you say?—No. The law of the Church of England has never been altered; not only has not been altered, but I should think that if there was any attempt made to alter it, such an attempt would command only an insignificant minority in our convocations. I should have thought it was a matter on which opinion inside the Church of England had hardened with remarkable rapidity and consistency.

21,299. Then you refer to the distinction between the innocent and the guilty party. I do not quite follow the point there. Perhaps you will expand it?—I mean those of our divines who took the view that there was an exception allowed by St. Matthew, regarded it as an exception in favour of the innocent party alone. For example, the Lambeth Conference regards it as permissible that in certain cases the remarriage of the innocent party in a divorce for adultery should be tolerated. My point is that that distinction between the innocent and the guilty party has been found in experience very hard to work—a distinction which cannot be carried out into the civil law. Thus the existing State law in England goes, of course, beyond that.

21,300. Then the result of those views is summed up a little later on in your proof by suggesting that those who take the law of marriage to be indissoluble by Christ's law would deprecate any extension?—Yes. I should have thought that their effort would go in the direction of forming public opinion to such a point that civil law could be altered; but certainly they would

go against any extension. They would be bound to resist the extension of the law as good citizens.

21,301. And to resist any making of the law easier for the poor?—They would be bound to, I think—or I should feel myself bound to.

21,302. It would logically follow?—Yes; as not being a good thing. You desire to extend good things but not bad things.

21,303. And it would tend to the breaking up of the general view of the marriage tie?—Yes, quite so.

21,304. I should like to ask you, my Lord, what is the remedy you propose for people who are left in that state of indissolubility. Are they to be tied together for life?—Yes.

21,305. Then why do you introduce any separation orders at all. The Church has always allowed separation, I understand. What right have you to interfere at all as a State and separate people without dissolving their tie. I mean you quoted a passage just now about "Let no man put asunder"—the well-known passage. Why does that become applicable at all, and justify a separation between people which has all the practical difficulties in life of a complete sundering of the tie, though it remains according to the view you have presented a legal bond or a spiritual bond?—I do not know, my Lord. I suppose society has said that it cannot force two people, who carry quarrelling or fighting, or who make one another's lives intolerable, beyond a certain point—that the State cannot force them to live together, or the Church cannot force them to live together.

21,306. I was not dealing with the question of forcing them to live together, but why should it interfere to separate them?—I understand that the Church has always said in certain cases: "We will not force you to live together" —

21,307. But why should it say: "We will interfere to stop you living together"?—The Church has never done that.

21,308. It has always allowed —?—It has allowed it.

21,309. Through the spiritual courts it has always allowed a party to bring a suit for separation, and has always maintained that suit throughout the centuries, and it is now in the Roman Church, and it is now in our English Courts, apart from the question of divorce?—I am not quite sure that I apprehend the question.

21,310. Well, I tell you why I asked, because it leads to the next point. What justification has the State for interfering to sunder people at all?—Oh, it is the definite law of St. Paul, "Let the wife depart not from her husband, but and if she depart let her remain unmarried or else be reconciled to her husband."

21,311. That is nothing to do with the State's interference. That is the parties. Why should the State at all, in your view, say, we will grant you a decree of judicial separation?—I do not think that is my business, if I may say so. That is not what I am interested in. All I say is —

(*Sir William Anson.*) It is the 107th canon.

21,312. (*Chairman.*) But it has always been the case that the Ecclesiastical Courts which acquired the domination of these suits in England allowed a suit, and compelled the other to live apart without a divorce?—Is that going beyond what St. Paul says?

21,313. I do not say it is, but —?—He there recognises that the wife may depart if life is intolerable with the husband provided she remain unmarried.

21,314. We know what the law is. Do you think it is a satisfactory remedy to apply, to sunder two people permanently and leave them still tied together?—It is the only remedy which the Christian Church allows.

21,315. Would it be possible to leave the Christian law aside for a moment. I ask whether you think it is a really satisfactory solution of human difficulty?—If you ask me that I should say there is no satisfactory solution of sin except by repentance. If people are quarrelsome and intolerable, somehow or other things must be very painful, but I think there is no matter on which you have to say that one's natural instincts

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would be so astonished as by the Christian law of the indissolubility of marriage. The disciples said: "If the case of a man be so with his wife it is good not to marry," and Christian society says, in spite of all it involves, you have to maintain it.

21,316. Is that a satisfactory solution of that class of case where one spouse starts a new home in another country with another husband or wife and other children?—It is the only solution which the Christian law allows, and therefore I think the Christian who believes in Christ and His word or the authority of the Church is bound to maintain that view.

21,317. If I might go back and suggest a doubt about that: the Christian law as you interpret it?—Christian law as the Church interprets it.

21,318. The Scotch law takes another interpretation, and frees the person from the trammels of a tie like that. Is not the question whether the Christian law is so certain that the State is free to take a different view from yours?—My Lord, it is not my view; it is the view of a very large number of people. I should say if you take a consensus of Christian views from the beginning, you have to say it is the opinion of the Church over the widest area.

21,319. Well, the difficulties I have put, you face in the way you have just said?—Yes.

21,320. With regard to this question as to a law for one class of the community and another for another. The answer is given in what you have already said, that you would not extend facilities, on the grounds you have already given?—Yes, I think so.

21,321. Then I think we come to the last point, which deals with what I mentioned before. If you would state the whole of that point, I think we should appreciate it better. It is page 4, paragraph 2?—You want me to enlarge on it.

21,322. Well, perhaps you would read it first?—"The present statute law of divorce goes beyond the laxer interpretation of the Christian law, in not attempting to distinguish the innocent from the guilty party." I wanted to point out that the persons who do not hold the view I hold, persons who maintain the laxer law—at least within our Church—give a restriction of the law which falls far short of our present statute law. I do not myself think that the distinction is easily maintained, and I do not wish to maintain it, but it is a fact that the laxer interpretation of the Christian law, which I do not hold, which allows the remarriage of the innocent party in the single case of divorce for adultery, does not allow this in the case of the guilty party, and therefore represents a *via media* which I should say is not found workable in modern society. Then further, in allowing remarriage after divorce at all it diverges from the law of the Western Church, which is also the law of the Church of England. That leads me to ask in the same way as it was asked by the last witness, that protection for the conscience of churchmen under the existing law should be provided. I entirely agree that what we want is something more than protection for the individual. What we want is protection for the Church to maintain its own law as a corporate body, so that the recognition of divorce should be as explicitly as possible made a matter of civil legislation only, it being left quite plain and unmistakable that the State intends to leave the Established Church, as well as every other religious society, to act with perfect freedom upon its own law and regulate its own practice for its own members.

21,323. That is in substance the same as the Bishop of St. Albans said this morning?—Yes. I think I should like to state it a little more broadly than he stated it.

21,324. Is it stated in your proof. Perhaps it is sufficient if you read the rest of the proof?—Yes. I have gone on to the much more disputable point of the institution of obligatory civil marriage here: "Those who desire to maintain the 'establishment' of the Church know that at no point is it so manifestly threatened as where the law affecting marriage which is not the law of the Church is forced upon the Church." I should like to say very strongly what was said by the Bishop of St. Albans. I think you could hardly exaggerate the tension on the matter and

the boiling point of feeling on the subject. "I would therefore beg most earnestly to plead for such an alteration in the statute law as will leave our Churches simply under the unaltered Church law and confine marriage after divorce to the registrar's office." Then I go on to what is much more disputable, and I feel myself much more doubt about, but I own it is my own conclusion that it would be better to make civil marriage in all cases obligatory. We are coming to that; and that view has been held by some people whom I have known whose judgment has impressed me, because I should have thought it would have been very improbable they would have held it—amongst others I am sure Sir William Anson will let me mention Mr. Henry Wakeman, who was a distinguished member of his society of very strong conservative views, of distinction as a historian and a strong churchman, who often, before he died, surprised me by saying he felt quite sure we must come to that view.

21,325. Does that finish what you wish to say on that point, my Lord?—Yes.

21,326. (Mr. Spender.) My Lord, I am not competent to go into any argument about your views, but perhaps I may ask a few questions with regard to their consequences. I think we must gather that the whole question so far as the Church is concerned is that of remarriage. It does not arise except in the case of remarriage?—I think not.

21,327. We are considering divorce *a vinculo*?—Yes.

21,328. Then you take your stand on its being a Christian law that persons married shall remain bound together when once married, and I suppose no evidence that could be offered on civil or social grounds for the extension of the liberty of divorce would affect your view in that respect?—No, as far as I could say that about anything. I think my view is based on what I feel quite certain is the law and intention of Christ.

21,329. We had a previous witness, a churchman, Mr. Douglas Eyre, who dealt with this point, and I think I am stating him correctly when I say that he put this view to us, that as a worker in the East End of London with a great deal of experience, he had been brought to the conclusion that the extension of the grounds of divorce in various directions was absolutely necessary, and I think he said in answer to me that he thought it was absolutely in the interests of morality, but that as a churchman he was bound to say still—though he said that on the side of the State—that the Church must remain unalterably opposed to it. Would that be your view, my Lord?—I do not think I ever like to speak on any matter on which I am dependent on other people's opinions simply. I find very different opinions expressed by those who have much better right to speak than I have as regards what is wanted amongst the poor in East London or in Birmingham, and as regards what the effect of any particular kind of social legislation would be on them. I own that my own strong opinion is—though I do not feel that I am one of those people who have a right to be consulted on the matter—but my own strong opinion is that on the whole the extension of facilities for divorce would weaken what I am quite sure is still a very valuable social asset, and that is the sense amongst the workers of the indissolubility of marriage. I think they are very familiar with immoral relationship, as we are in all classes of society, but I think there is a very wide feeling that marriage is for ever—the echo of those words in our service largely, I think—"for better for worse, for richer for poorer, till death us do part," and that still remains a great social, as well as religious asset.

21,330. I was trying to get some information about a very definite conflict of view on the part of churchmen which we have had presented to us. We have had that view that I have quoted which would allow the State, even with encouragement from churchmen, to go on and extend the grounds of divorce; and we have had the other view expressed with equal strength by churchmen to the effect that they would fight to the uttermost against any extension by the State of facilities for divorce; and I may take you to be of the latter opinion?—Yes.

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21,331. You would fight against extension by the State as a churchman?—Yes.

21,332. Then you use the word “opinion” about a good deal of the view of the Church. You said with regard to the passage in St. Matthew “*παρεκτός λόγου πορείας*,” the modern opinion was that those words were spurious, and I think you said “opinion” on other occasions?—I did not mean they were spurious. They are an authentic part of the first Gospel, but their insertion in the first Gospel represents, like certain other passages of the first Gospel, the dominance of Jewish opinion. They are not reconcilable with the words as they occur in the other Gospels.

21,333. Is it your view, or the opinion of many, that those words must stand outside the corpus of Christian doctrine; that would be your opinion?—Yes.

21,334. But you would not say that that opinion or that belief about them was required of all members of the Church of England or required of Christian people as a test of Christian belief?—Oh no, because undoubtedly the words in St. Matthew stand in St. Matthew, and anybody can refer to them. I should always draw a great distinction in practical matters between the law of the Church as a matter of fact, and what the Church requires you to hold as a matter of opinion.

21,335. Would you say in this present case that the Church as a Church has the power and authority, to exact that opinion. I am speaking now of the Anglican Church?—Not to exact the opinion but to exact the practice.

21,336. But you would say that a different practice must follow from a different opinion—if there were members of the Church of England, or any considerable body of them, that held that opinion?—A man may say I do not think the Church need take so strict a view, but it does adopt that law. For instance, there might be a very large body of persons who might say: I very much regret that the Church legislates in such a manner, but there it is, and as a loyal subject I must hold to it.

21,337. Your view is that the Church has legislated on this matter?—Yes; my view is that the Church has maintained, and does maintain, the law of the Western Church, and nothing has ever altered it.

21,338. That requires you to say that the Divorce Act of 1857 was, from your point of view, anti-Christian, and that all marriages that have taken place under it have been against the law of the Church?—Yes.

21,339. Is there any machinery or method by which that can be enforced on a clergyman of the Church of England?—No, that is my point. That is one reason why I am here. In the Church of England we have not been so faithful as—if Lord Guthrie will allow me to say so—they have been in Scotland to the principle that a Church ought to claim liberty to express and enforce its own law. We are only re-discovering, and that painfully and slowly, what it appears to me that the whole logic of modern life points to, namely, that it is absurd to identify the law of the Church and the opinion of society, and that you must recognise that on many points they are distinct. But undoubtedly I think the present statute law did err in that respect, that it dealt with the whole of society and the Church as if you could deal with them as necessarily one instead of distinct organizations.

21,340. Might we not say that there is a very strong body of opinion in the Church of England—I do not say a moderate, but a very strong opinion—that that is not strictly defined by the law of the Church, and that the attempt to enforce it would be an arbitrary proceeding on the part of a section of the Church?—A great number of people who are members of the Church of England, because they are not members of anything else, would no doubt think that, but there are some members—

21,341. But there are communicating members of the Church of England who you would say are loyal members, are there not?—Oh, I do not know about that. My own impression is, if you ever get any corporate expression of the opinion of Church communicants, you would find it is almost more uniform on this question of divorce than on any other question. I

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have never found myself in Diocesan Conference or anything of that kind—and after all they are the meetings where people who are keen about Church membership do get together—I have never found myself in any such meeting without finding that whatever might be the differences of opinion amongst us, when you get to this subject of divorce there is, I should say, an increasing unanimity of opinion that the duty of the Church of England is to maintain the law as it is expressed in the canon—the strict law—the law of the indissolubility of marriage.

21,342. May I take it a point further and ask a question I put to the Bishop of St. Albans with regard to Church discipline, because that seems to me of quite as much importance as the mere question whether the parties are to be married in Church, namely, that if there were the conflict your Lordship supposes, it is more likely to come over the penalties than over anything else. Do you hold the view that any member of the Church of England who availed himself of grounds of divorce as sanctioned by the State, but not recognised by the Church, would be liable to these penalties, and would become, as I said, excommunicated?—I should rather distinguish between the two words “liable” and “necessarily.” Certainly liable. That is to say, I think the Church as a body must be free to act. I do not think there is anything of which it can be said that it is so vital to the life of the Church as that it should retain at its last resort the liberty of deciding who does and who does not belong to it, and I should have thought there was nothing on which you could make such a decisive appeal to scripture as that Christ instituted a body which was to have legislative and disciplinary authority over its members. I am not saying what I think myself is the ultimate point of allowance to which the Church, or to which the particular Bishop could go; but liable, yes. Liable to be excommunicated, yes.

21,343. And those cases, I suppose, you would say would be very likely to arise under any extension of the grounds of divorce, as to desertion, for example?—Yes, the more you extend, the more liable the cases are to arise undoubtedly.

21,344. Perhaps I ought not to press this point. Perhaps you would —?—I am very anxious we should recognise on all grounds that Church membership is not a matter of course. I am very anxious in every way to confront people with the fact that if they wish to be Church members they must realise it is a very serious thing, which a man must seriously undertake, and which involves serious responsibilities; and I think the whole course of modern society tends to making that plain.

21,345. You freely acknowledge, as I gather from the last part of your evidence, that that view might so bring you into conflict with the State as to require a reconstruction of the whole position as between Church and State?—Yes, I should like to lay a little stress on the word “might.” I think what I want the Church to do is to make quite plain that whatever may turn out between Church and State, this is the Church’s unalterable view and mind; it is the view and mind that is not likely to be altered.

21,346. But that is a likely result which might be said to narrow—or perhaps you would say deepen—the conception of churchmanship?—Yes, I prefer the word deepen.

21,347. (*Sir George White.*) Did I understand your Lordship, in answer to one question that was put by Lord Gorell, I think, that you are not prepared to place an interpretation on the New Testament as giving the spirit of the teaching rather than any definite law, and that therefore the changed circumstances of the times would not alter your view of a literal law being laid down to govern our conduct?—No, I think you may say the influence of the Church is in two kinds. There is what might be described as the influence of personal conviction. But also the Church is quite definitely a formal association or organisation, and, therefore, at the last resort, though the Church is a free body, and loves liberty, it has laws, and must have laws, and no society can exist without laws, which, if a man break, at the

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last resort, he breaks his membership, and the Church has commonly held, and I think rightly held, that the indissolubility of marriage is one of the ultimate constant laws of Christian society which if he breaks, he breaks his membership.

21,348. Then, in that view, you make no allowance for the altered conditions of women now as compared with their condition in the Eastern countries?—No: I think there is no matter in which the dignity of woman is more vitally bound up than in the maintenance of the marriage tie. I should like to ask anybody who held a different view to read M. Bourget's novel *Un divorce*. I think there is a good amount of modern literature of a kind that could be quoted in that sense.

21,349. You would hold that the altered position of woman to-day, as compared with the early Christian era, really should make the law of divorce more strict, instead of extending it, I presume. That would be your view rather?—Yes, the Christian Church came out into a very modern spirited society—very like ours in certain respects—and had to maintain this law to be a real fundamental law for human society—for the home.

21,350. And it follows, therefore, that if the State, on grounds of public policy, felt there was an absolute need of some extension of the divorce law, the Church would remain absolutely unmoved, from the view you laid down of the indissolubility of marriage?—I hope so, sir.

21,351. And then, following on the question that Mr. Spender has just put, do you think it possible for the union between Church and State to exist when this disagreement prevails?—I do not know, sir, whether you want my opinion as a private individual. I think most churchmen think it is. I cannot pose myself as a person who maintains that view very strongly, but I do not want to raise that question. I mean I think the business of the Church is to maintain its own law and principle and take the consequences. Of course, I know that a relation of Church and State in Scotland has always been maintained, which is quite different from the position in England and which does leave to the Church a great deal of liberty. Unless I am contradicted, I should suppose that the recent action of the committees in Scotland representing the Scotch Established Church and the Free Church on this subject has been conducted on the basis that it would have been competent for the Established no less than the Free Church in Scotland to maintain the old law, whether they thought it right to do so or not, without violating their Established position.

21,352. I do not want to press your Lordship for your individual opinion, but I suppose the majority of this Commission think that something must be done in the way of possible facilities for divorce, and it would have to be recognised that we should have to face a revolt of the large majority of the Church people?—Yes.

21,353. And some of us might be prepared to risk it and others might not?—If you ask my opinion, I cannot conceive an extended law of divorce not leading to an alteration of relationship of the most serious kind.

21,354. And you would rather go backwards, and advocate a rescinding of the Divorce Act of 1857, I gather?—I should wish immediately for a modification of that law in the sense of leaving the Church free. As to saying that you could alter the State law into conformity with Church law, that depends on public opinion. I should not myself have supposed that public opinion would render it possible at this moment. I should suppose that the Churchmen and those who hold with me would be always working towards a production of such a State opinion as might admit again of the State law being in accordance with the Church law, but that no doubt is a far cry.

21,355. Would not your view lead to individual and therefore various actions on the part of the clergy; that is to say, one clergyman would have a conscientious objection against the marrying of a divorced person and another might not, and you would have different practices in different parishes?—I should

certainly wish that the Church should be able to exact its discipline of its ministers and officers in that respect; but taking things as they are now, there would be a few clergy who would wish to retain the liberty of marrying divorced people in Church; but my impression is they are very few. In my diocese there is almost complete unanimity as far as I know.

21,356. What would be the attitude of the Church in the circumstances you mention with regard to civil marriage before the registrar without any Church sanction? In cases of a divorce following a civil marriage of that kind, would the Church still treat it as a solemn contract, and not look at it in any different way than if they had been married in the Church?—You mean, would the Church regard two people who had been married civilly as properly married?

21,357. Yes?—As truly married?

21,358. Truly married?—Yes.

21,359. And in cases such as you quoted where in certain States in America the contract is formed so easily as to be scarcely regarded as a contract by some of us, even then, would the Church regard it as a contract which could not be broken?—No, that is really what I wish to say, that the Church view of the validity of the civil contract depends on the degree to which the civil contract approximates to the Christian principle. In a State where it was frankly realised that people could be quite easily divorced, and people married with the assumption that if they did not suit one another they could give it up—in a State where it was frankly recognised that people who marry as an experiment could, if the experiment failed, try with somebody else, I could conceive that the Church would say that is not a contract that we regard as marriage at all; and therefore the Church must always retain its liberty to regard, or not to regard, the civil contract as a Christian marriage, because for a Christian contract it is essential that people should make the contract with the Christian principle in their mind.

21,360. Who would be the judge whether this is a Christian contract or not?—From the point of view of Church discipline?

21,361. Yes?—The Church from the point of view of Church discipline I suppose.

21,362. Then in a case in the United States where the contract is so easily carried through and without any Christian basis, if the two persons separated, the Church would have no difficulty in going through the contract of marriage for either one or the other, with a fresh person?—I should imagine that things must be very far gone before the Church would be willing to take that line.

21,363. Without any breach of charity, would not your Lordship say that there are many thousands of marriage contracts in England contracted between those who are practically pagan, in their daily life any way—without any sense of Christian marriage at all?—I should be sorry to think that. My own experience is that the ideas of religion are very much more deeply rooted in people than their common lives are apt to suggest. I do think that in the ordinary conscience of Englishmen there still does inhere very deeply the sense that in marrying they are entering into an indissoluble relationship.

21,364. You have read probably some of the evidence we have had here, of the very low view taken by the lowest class of society as to marriage?—Yes, but I do not think my opinion is worth anything on the subject. I should refer it to other people as having ten times better right than I have to speak on that subject.

21,365. (*Sir William Anson*.) I think you would agree that the marriage laws of the State are of the utmost importance to the State, quite apart from the Church?—Quite so, the utmost.

21,366. And should be based on general conditions of the social and moral well-being of the people?—Yes indeed.

21,367. You would base them on a text or on certain texts of Scripture?—Not for the State.

21,368. Well, for all citizens who wish also to claim membership with the Church of England?—Yes, I should not say on any text myself, because I have the

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greatest distrust of particular texts. I would much rather say on the mind of the Church supported by the Bible.

21,369. Looking at the words of Scripture, they refer to a divorce without cause, do they not—"A man who putteth away his wife and marryeth another" without any cause of complaint. This is the language of the Gospel of St. Mark and St. Luke?—Whether a man could put away his wife "for every cause" is a phrase I call attention to as having been introduced into St. Matthew's Gospel, but as not being in the original form of the Gospel.

21,370. Yes, but the text suggests that our Lord was dealing more with the condition of society around Him, in which a man could put away his wife for a very trivial cause?—No, sir. There were two schools among the Jews. There was the school that did recognise that, and there was the school of Shammai which took the stricter view and allowed divorce for adultery only; and I should say that our Lord was not content with affirming the stricter of the two current views, but took a still stronger view which caused the exclamation of the disciples.

21,371. I only wanted to get at the condition that appears in the Gospel of St. Matthew, whether that was a modification of the Christian principle laid down?—Yes.

21,372. And an authoritative modification?—I should suppose what happened was this. It is well known that the first Gospel in its present form took shape in the Jewish community, and what appears to have been the case is that the old Jewish prejudice was sufficiently inveterate to reintroduce that modification, and that it so obtained its place in the first Gospel; and of course that has led to various expedients to reconcile it with the other Gospels.

21,373. Of course you introduce various questions as to marriage and so on?—Yes.

21,374. So that the principle is modified by the words in the Gospel of St. Matthew?—Yes, the Eastern Church, for example, has always appealed to those words in St. Matthew's Gospel; the Western Church has declined to pay attention to them. I maintain the Western Church has been justified by the extraordinarily careful examination of the texts of the Gospel that has been going on for the last fifty years.

21,375. When you have two texts, one of which amplifies the other and one of which is accepted by one great body of the Christian Church and not by another, can you safely build up a whole code of marriage law upon that? I mean, are not you building on a slender foundation?—I might say I did maintain precisely the view twelve years ago that you, Sir William, have just put into words, and I own it is a much more careful and exact study of the Gospels and of the whole recent criticism of them, which has led me to believe that I have become as certain as in such matters one can be, that the original text did not have that exception. Then I think that illustrates what has otherwise been very puzzling, that is, that the early Church undoubtedly, until it became in the East implicated in the State legislature, did have no doubt at all that the Christian principle was the principle of indissolubility of marriage.

21,376. Then we do really come to a question of construction and to what you say is the law of the Church. Has that always been the accepted law of the Church—this indissolubility of marriage, I mean, did the Church of England, say, in the 18th century, raise any question as to the validity of remarriage of divorced persons by private Acts of Parliament?—You quoted Archbishop Manners Sutton, but I venture to say at the present moment the opinion of Archbishop Manners Sutton would be extremely different from the Church feeling and Church mind in the country. I do not think it can be denied by anyone who knows English history that the opinion of the Church of England was at a certain period Erastian to the last degree, but the whole modern life of the Church is bound up with a return to unanimity on matters which Bishops like Archbishop Manners Sutton would have repudiated with the greatest horror.

21,377. I was not putting forward the opinion of Archbishop Manners Sutton as finally authoritative but as showing that the opinion of Church people, which is the law of the Church, has very much varied?—I should say the opinion of the Church of England, yes, because on a vast number of subjects that is so. I should have thought the opinion of the Church of England of the 18th century is wide apart from the authoritative law of the Church.

21,378. But where is the law?—Canon 107.

21,379. But the Canon allows divorce *a mensa et thoro*. That is to say, it relieves the parties of the matrimonial obligations they entered into at the marriage contract?—Oh, no.

21,380. It only does not allow them to remarry in the lifetime of the other. It practically amounts to divorce?—And we say there is nothing novel about that statute. It only used a quite conventional and clearly understood distinction. It said that people need not live together. We will divorce them *a mensa et thoro*, but we will not allow them to remarry.

21,381. If you go back to the pre-Reformation days facilities of getting a divorce and the great difficulty led to the number of cases of spiritual affinity, and so on, to become so great that a statute had to be passed to reduce the grounds under which those privileges could be granted?—Confessedly they were all evasion. It was an extremely licentious period, and the Church took what I think is a fatal course of saying at all costs, We will keep people Churchmen. We will let them do what they like as long as they are called Churchmen; and they went to all lengths of evasion to keep up the Church in that way.

21,382. And through this procedure the Church almost recognised divorce by consent?—No, I think not. I think whenever the Church was pressed as to its principles, it had to admit, "Our principles admit of no divorce." The Church has been very unfaithful and very worldly, but whenever it is pressed, it has had to say those are my principles.

21,383. But the opinion of the Church has varied from time to time the Christian principle?—Well, the opinion of the Church has varied as between East and West. I should not have thought the opinion of the West has ever varied.

21,384. Well, the opinion of the Church of England to-day is very different from the opinion of the Church of England of 100 years ago with regard to this particular question?—I should sooner say the opinion of particular or of prominent Churchmen.

(Chairman.) With regard to the 1857 Bill, ten bishops voted for it on the second reading, including the Archbishop of Canterbury, and five against it. On the third reading, five bishops voted for the Bill and seven against it.

21,385. (Sir William Anson.) Supposing we accept the civil marriage as the only valid form of marriage and the parties who desire to seek the blessing of the Church, should we have any assurance of uniformity having regard to the fact that opinion has varied from generation to generation?—I should say that there has always been the underlying and dominant principle of the Church; and that after all vagaries due to the pressure of social circumstances, you always find the Church returns under pressure to that which was its bedrock principle. I should say there has been no country in which the identification of Church and State has been carried further than in England, and that under that persuasion the English Church went almost to incredible lengths in surrendering itself into the hands of the State; but I should have thought its return now had been a return to the bedrock of Christian opinion.

21,386. If what the Bishop of St. Albans suggested, and what you suggested too I think, was carried into effect, and the civil marriage was the only necessary form of marriage, you would endeavour to secure that there should be uniformity of treatment all over the kingdom—that there should not be any licence to one clergyman to act in one way, and another in another, with regard to giving the benediction of the Church or administering the Sacrament?—Oh, it would be of the

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greatest possible importance that there should be uniformity of action, yes. Of course what now hampers uniformity of action is that the Church has no legislative power of itself.

Adjourned for a short time.

21,387. (*Sir William Anson.*) Assuming we have the civil marriage which you and the Bishop of St. Albans have suggested as the only necessary form of marriage, should we be sure of continuity of opinion as to the conditions under which the benediction of the Church and the privileges of the Church would be secured. That is one of the difficulties that presents itself to my mind in the matter. I have tried to point out the changes of opinion which the Church has undergone in the last few hundred years?—Of course, nobody could answer that question, or any question which is concerned with human opinion, for certain, but I should have thought you have got the best security for that sort of continuity of treatment if the Church in England goes back upon what, on the whole, has been the fundamental and continuous principle of the Church of which it is a part. It is much more likely to be continuous than anything which merely expresses an individual feeling.

21,388. That must be a problematical question. Another is, I think, more practical, and that is as to securing uniformity of action in the two provinces?—I should have thought it should be said to the Church in the most distinct way, and I should have thought the Church would say to itself, that it would cut the sorriest figure, and would be incurring the gravest responsibility, if it tolerated diversity of practice.

21,389. It would not be your view that the individual clergymen should be allowed?—No, nor the individual bishop. Oh, no.

21,390. And you would have no fear that the substitution of the civil marriage for the religious service in the uniform type of marriage would tend to any relaxation of the sense of obligation?—I do not think I could answer that question in the negative. I have expressed myself very tentatively on that particular point of the substitution of civil marriage. I am inclined to think it would be the best course out of a great difficulty; but I think it is quite possible, and even likely, that there would be some evils.

21,391. And that it would lead also to greater readiness on the part of the State to extend the grounds of divorce?—I think that is quite possible. My own opinion is that amongst serious men there is a very widespread sense—and perhaps increasingly widespread sense—of the perils of extension of divorce; but it is quite possible, of course.

21,392. Would the Church, in your view, attach the same importance to the permanency and sacredness of the civil contract as it has done to the religious service?—Yes; I should very strongly desire to maintain that.

21,393. I ask that because there was something you said in answer to Sir George White, that if the general code was relaxed in the direction of freer divorce, the Church might not regard the civil contract so seriously?—I gave as an example certain States of America. I should be very loath to believe we have at all got near that point in England or are likely to get near it.

21,394. But you would prefer to base your views as to the indissolubility of marriage, not on the practical advantage to society but on the words of Scripture?—I should not be at all willing to believe that. I think the advantage of society, is bound up with the Christian Church, and I think this principle of the indissolubility of marriage is much more than an argument from a single text. It has been the fundamental basis of Christian society.

21,395. You mean that the principle has been tested?—Quite so.

21,396. (*Mr. Burt.*) I am, sorry I did not hear your Lordship's evidence in chief, but I have had an opportunity of looking over the notes. Only one or two questions I would like to put to you. You deprecate the statement that there is one law of divorce for the rich and another for the poor. The law is the same in both cases. It would be more correct, I suppose, to

say that the cost to the poor under the existing system makes the divorce law practically prohibitive?—My attitude, of course, towards the question is determined by the question whether I think it is a good thing or a bad thing that it is proposed to extend. What I ventured to say in my notes was, that I thought that from any point of view of practical experience it must be acknowledged that the law as a whole is on many points for the rich rather than for the poor. That is to say, there are a great number of laws which are practically, through the expense of the law, available for the rich and not available for the poor. The poor man knows he cannot go to law generally. But, of course, my attitude towards the matter is determined, no doubt, by the consideration that I do not think it is a good thing that it is proposed to extend.

21,397. And therefore you would not be inclined to afford further facilities to the poor?—Quite so.

21,398. With regard to civil marriage, I think your Lordship makes it quite clear that you think the contract should be a civil contract. The contract of marriage should be a civil process rather than ecclesiastical?—You mean that I am in favour of the civil contract being separated from the ecclesiastical?

21,399. Well, I am just putting it?—That is my opinion.

21,400. I am putting it interrogatively as to whether that is so?—Yes, very tentatively; and I have said I think we are tending to a condition of things where we must have the compulsion of civil marriage.

21,401. Could you say to what extent that represents the view of the Bishops and of Churchmen generally?—I have said that I have been surprised myself to find how many people with very conservative tendencies, from whom I should not have expected it, have expressed that opinion; but I do not gather it would be at all popular in Church circles. I do not think you could say that the body of Church opinion is in favour of that.

21,402. (*The Archbishop of York.*) With regard to the New Testament question on which you have given evidence; is it the case that modern scholarship tends to regard the Gospel of St. Mark as the primary and principal authority?—The Gospel of St. Mark and the common matter of St. Matthew and St. Luke.

21,403. That is generally designated as "Q"?—Yes.

21,404. So that whatever was contained by St. Mark and by St. Luke together might be considered as having a much greater textual authority than what appeared in St. Matthew alone?—Yes, incomparably greater.

21,405. But you would agree that the words of St. Matthew must have been inserted at a very early date?—Oh, undoubtedly, yes.

21,406. Would you go so far as to suppose that the author of St. Matthew's Gospel himself inserted them, rather than some later copyist?—Oh, I think there would be no ground at all for saying that it was a later copyist; but that it was the author of the first Gospel; that the first Gospel always had the words. The first Gospel grew up in Jewish circles, was written in Jewish circles, and represents Jewish tradition; and I suppose this has been the gloss or interpretation put on the words in these Jewish circles.

21,407. The point of view from which the reader would naturally look upon it in the case of St. Matthew's Gospel alone would be the point of view natural to a Hebrew accustomed to the disputes between the schools of Hillel and Shammai?—Quite so.

21,408. But quite apart from the words in St. Matthew, is it not the case that the principle upon which the view of the Christian Church has been based does not depend on the text in St. Matthew about putting away or remarriage; that the principle, which is equally plain both in St. Matthew and St. Mark, is that they twain shall be one flesh?—Yes.

21,409. And what God has put together man is not to put asunder?—Quite so.

21,410. In your judgment, is there any variation at all in any Gospel on the clear way in which that principle has been laid down?—No, I think not; and I

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think the more one looks at the exception in St. Matthew the more one feels it does not fit in either with its ground or with its context.

21,411. And is it not the case that in St. Mark, and St. Matthew as well, the sayings of our Lord with regard to the particular point of putting away a wife or a husband are without an excepting cause—that these sayings are a deduction from the principle which He has laid down: “So then they twain shall be one flesh. What God hath therefore joined together, let not man put asunder.”?—Quite so.

21,412. Then the attitude of the Church on the Scriptural ground does not depend, does it, on the variations—any interpretation that may be put on that text in St. Matthew—but the broad ground of principle of which it is an illustration?—Yes, I think it is quite true to say that.

21,413. Would you say that the other ground on which the Christian Church has acted has been that from the very first moment, as I think you said, the Christian Church acted on the principle as distinct from the doubtful words of St. Matthew?—But they showed no cognisance of the doubtful words of St. Matthew for some time.

21,414. Would it be right to say that it would be quite untrue to say that in this matter a Church, or a particular Church, took a doubtful view on a particular text, but rather based its view on a principle that is not within the range of that doubt, and on the interpretation of the whole passage of Scripture of which that was only a small section, from the very first?—Yes, I think that would be perfectly true. I feel the mind of the early Christian Church is based on something more important than a particular text. I think it is much more fundamental and all-pervading.

21,415. With regard to the views of the Protestant writers which have been mentioned, I imagine that it is the case that the suggestions in the *Reformatio Legum* were mere opinions and were never expressed in any authoritative document of the Church?—Yes, I believe that to be entirely the case.

21,416. So that, so far as the public documents of the Church are concerned, none of these opinions have had any expression at all?—I think not; and I think at the time of the Reformation the open Bible was put into people's hands again, and there was an extraordinary outburst in the forming of individual opinion on particular texts which caused almost everything of almost every kind or sort to be said; but I think it is quite true that in England that was never allowed to affect the formal action or utterance of the Church.

21,417. Then is it not the case that when the Church did proceed to draw up Canons they were not the Canons suggested in the *Reformatio Legum*, but Canons which were laid down as forming part of the law of the Church?—Certainly.

21,418. Are you aware of any date at which the Liturgy of the Church was revised, in which any attempt was made to embody in the public documents of the Church any of the opinions of the Protestant writers or of the individual bishops who have been quoted?—I do not think so.

21,419. When you speak of the law of the Church, you would lay emphasis, would you, on the service in the Prayer Book as expressing the law of the Church, as well as the Canons?—Oh, very much. I should have thought she had behind her a great weight of tradition and of enactment, and that amidst the many variations, with a full consciousness of what new opinions there were, the old position was maintained in all the formal actions and worship of the Church.

21,420. Is it not true to say that what is established by law in England is not the Church itself, but the Liturgy of the Church as embodied in the Act of Uniformity?—I think I would rather not say. I do not think I am enough of an expert in the matter to express an opinion on that.

21,421. At any rate the Prayer Book, which is the schedule to the Act of Uniformity, is the recognised public law of the Church?—Yes, quite so.

21,422. And the service of the Prayer Book takes, in your judgment, the strictest view of the indissolu-

bility of marriage?—I cannot conceive how that can be doubted.

21,423. Then with regard to the expression of opinion of individual bishops and divines; they have never operated so as in any way to change the formularies which contain the public law of the Church?—No, never.

21,424. They are merely in the nature of *obiter dicta*?—Yes.

21,425. And have no more value than that of the individuals who gave them?—Quite so.

21,426. Is it not the case that at the time of 1857, the bishops who have been quoted had never met with the Convocation or ancient synods of the Church?—The whole corporate life of the Church had been in abeyance.

21,427. So that they were acting and speaking as individuals, which it would be quite impossible for any bishop so to act or speak if Convocation had been sitting?—In a way quite impossible for him to act or speak now.

21,428. The traditions of the Church have revived now—the synods and so on have revived?—Yes.

21,429. With regard to the summons of the synods of the Church; in your knowledge have these Convocations ever expressed any variation of opinion on these matters since they were revived?—I believe not, in spite of the—

21,430. Can you give us, or tell us how we could get, any recent resolution of Convocation on the matters which are before us. Is it within your knowledge that recently any of the Houses of Convocation have considered them?—I do not think I am prepared to answer that question exactly at this moment. It certainly has not been considered within my time. Certainly nothing has been done; of that I feel quite sure. I could not say what discussions there have been. I am quite sure that nothing has been done calculated to express a desire to alter the law of the Church as it has been before.

21,431. Would you say the views you express are not at all the views of any section of the Church, but of a very large number, or of all sections?—Yes, that is what has been striking me very much. There are many matters in which a bishop is conscious that he has the opinions of one side of the Church with him or against him, but not the other; that he has to reckon with a section of the Church. On this subject he feels he has behind him the general opinion of the Church, and that increasingly I think—or the opinions of the main body of the Church.

21,432. As far as the laymen of the Church are concerned, I presume the Houses of Laymen would have a claim to have their opinion expressed?—Yes, undoubtedly.

21,433. As being representatives?—Undoubtedly; it is the only expression of the laity we have to rely upon.

21,434. With regard to the question that has been put to you very often about the conditions of proper marriage. I think you said it is important to remember that there is a great distinction between a Christian marriage and a marriage between persons who may or may not be Christians?—Yes.

21,435. That Christian marriage means much more than a contract to live together. It means a contract to enter a state or status?—Quite so.

21,436. With regard to the passage often quoted in St. Paul's Epistle to the Corinthians, called the “Pauline Privilege”: is not the point of that simply to deal with cases where expressly the marriage is not between Christians, but between Christians and non-Christians?—Precisely; the whole point of that passage is to draw a contrast between the obligation of persons who in pagan society had entered into a relationship; the contrast between their liberty and the obligation of persons who within the Christian society had entered into the state of matrimony.

21,437. Would you agree as to the interpretation of that passage that it means that the marriage had never been a Christian marriage and therefore could not bind the partner who has become a Christian more than the partner who had remained an unbeliever?—

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Yes; I do not think it admits of any other interpretation.

21,438. Is it your view that part of our great difficulty arises from the fact that hitherto civil law has always assumed that this is a Christian nation in the sense that its inhabitants are Christian?—Yes, I think there you get to the very bedrock of difficulty.

21,439. That is the main ground?—I think that is the bedrock of difficulty; it touches us at all points; and that is an assumption which I do not say it is increasingly difficult to make, but an assumption that it is increasingly difficult to make with any reality.

21,440. Then would you say that the State in this very important matter that is before us is to consider on public grounds whether or not it is able to consider any longer that this is a Christian nation in the sense that its citizens may be assumed to be Christians?—Yes; in the sense that its citizens may be assumed to be willing to bow to the Christian law—the Gospel law.

21,441. Supposing the State felt it could no longer assume that its citizens were Christians, and that the marriages they contracted, whether before the civil registrar or not, was a Christian marriage; would it not then be the duty of the State to change the position which was due to its former attitude, and to say that citizens cannot, merely because they are citizens, claim the right to a Christian marriage?—Certainly I think so. I suppose that is bound up in the whole alteration of conception. The former conception was based on the supposition that the nation as a nation accepted the law and religion of Christ; and if it be no longer the case that the nation as a nation can be said to accept the law and religion of Christ, which I believe to be true (I believe that that situation has been reached where you cannot assume that a person is prepared to regulate his life by what he believes to be the principles of Christ), then I think the attitude of the State is bound to change.

21,442. How far under those circumstances would you think that the State was bound to consider, with regard to its marriage law, the large numbers of its citizens who did not wish for Christian matrimony, or who were not, because they were not Christian, capable of Christian marriage?—Oh, certainly.

21,443. You think the State is bound to consider that?—Oh, most certainly. I do not think the State law can be maintained at a level much higher than the average public opinion of the citizens at any time.

21,444. So would you consider it as inconsistent that the principles you have laid down this afternoon that the State should have regard in its public law to these citizens who cannot be regarded as desiring or capable of Christian marriage?—Of course a Christian citizen would try to influence public opinion, but he cannot complain at the State law following public opinion.

21,445. In the same way as it would in the case of India?—In the same way as it would in the case of India.

21,446. But you would still consider that the State had every interest to keep the standard of its public marriage law as near the Christian standard as it possibly could?—Oh, undoubtedly; and not only that, but I think you have to recognise that in England a vast number of people, who are not at all orthodox, at the same time do want the country in some sense to remain Christian. So that you have a sort of opinion, which is intermediate, to deal with in England.

21,447. Is it your opinion that the State in 1857 in going as far as it did still felt itself, on the grounds of interpretation of passages of Scripture, to be on the whole within the Christian standpoint about marriage—rightly or wrongly?—I should think that was the case.

21,448. Would you regard it as amounting to something very different if the State were to legalise grounds of divorce that certainly could not ostensibly come within the scriptural exception?—It would be taking a step further—very markedly. I should not have supposed that anyone could seriously contend that the existing marriage law could be really

reconciled even with the laxer interpretation of St. Matthew.

21,449. Your point is that that would become more apparent if extended grounds of divorce were legally established?—Very much more.

21,450. But you would recognise that the State might have in its marriage law to consider citizens who were not members of the Church or even Christians, but that if it did it ought to be kept as close as it could to the Christian standard; that would be your view?—Yes, certainly, because there still remains, and one is sometimes astonished with its force, a very large body of opinion which is unwilling to break with the idea of a Christian nation.

21,451. With regard to separation, I think you were asked as to the principles on which it could be justified. Has it not been the theory of the Church that separation might be necessary for the purposes of protection?—I think so, yes. I think if you read the Christian moralists who talk about it, that is what they base it on.

21,452. The Church never advised separation?—No, never.

21,453. Or compelled separation?—No, never, I think.

21,454. It only permitted it if persons in need of protection applied?—Yes, it only gave protection to the wife, or possibly to the husband—but gave protection against something which constituted intolerable violence.

21,455. You said, with regard to one law for the rich and another for the poor, that you were not personally in favour of cheapening the procedure for divorce, but might I ask this question. This is not an ecclesiastical question, but a civil question. Supposing the State, rightly or wrongly, gave the legal remedy to its subjects, ought the mere fact of poverty to be a bar to any of its citizens from obtaining the relief which the law, rightly or wrongly, allows them?—I should have supposed, speaking generally, no; that you want all law to be as cheap as to put it at the disposal of every citizen; but if you think a particular law will do more harm than good, you would naturally, I think, limit your application of that general principle and decline to be a party to extending what you think would do mischief. I think that is my feeling.

21,456. But would you put as your ground that you wished to make expensiveness the barrier. Would it not be more your view (I only want to know what your view really is) to say that it is to the interest of the State with regard to all marriage contracts within its area that they should be both made and broken in the most serious possible way, and that therefore that breaking should only be done under the most careful conditions, and those conditions are best secured by a High Court; and that therefore it is not in the interests of the poor that their marriage contracts should be considered in any but the best possible court?—Yes, I do not think any one can doubt that if proceedings for divorce were extended and cheapened as is suggested, that there would be a very great extension of the sense that divorce was a comparatively innocuous thing. I do not think it is possible to deny that by the existence of one rather inaccessible court you maintain a feeling that divorce is a very very remote and impossible proceeding. I think it is a little akin to the desire Plato expressed that certain religious mysteries, which he regarded as dangerous, should be accessible only at the cost of a very expensive sacrifice.

21,457. Would you go so far as to say you thought the bare expensiveness of divorce proceedings was a merit in the sense that it provided a bar which made it impossible for any but the wealthy to have recourse to it?—Yes, I think I do. I should be very slow—one is very unwilling to use the restriction of wealth at any point—but I should have thought if you desired to restrict, as far as possible, the use of something, you naturally find yourself resisting any attempts to make it cheap.

21,458. Now about the consequences that may be involved. Do I gather that your suggestion is that if the State recognises the impossibility of applying in its

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strictness what you call the principles of Christian marriage to all its citizens, that great care should be taken to safeguard the conscience of the Church?—Yes, I think that is not only a principle of liberty but also the State itself ought to be extremely solicitous to maintain the conscience of any body of its subjects intact. I think the whole modern State life depends on the State being as careful as possible to maintain the conscience of its citizens.

21,459. Would you say that equal freedom of conscience is almost as important a national liberty as any other?—Quite so.

21,460. But I think you go further and say that the State, having regard to the conscience of the clergy, at any rate, should go back on what it has already done in the Act of 1857, and should amend that law to the extent of removing the clauses which compel a clergyman to give the use of his Church to a marriage, even of the guilty parties. I understand you to say you think the State should go back on that, having respect to the conscience of the clergy, and say that no remarriage after a divorce ought to take place elsewhere than in the civil registry office?—Yes, I greatly desire that. I think it ought to be done. I do not think it is possible for anyone to know the feelings of churchmen without knowing how great that, as it seems to them, invasion of the pure region of spiritual discipline has been resented.

21,461. Then I may take it you press for this definite amendment of the Act of 1857—that all that portion of it which deals with marriage you think should be deleted, and instead of that proviso should be made that all marriages taking place after a divorce should be civil marriages?—Civil marriages. I do greatly desire that.

21,462. If that were done, would you then feel the same necessity for pressing for civil marriages in all cases?—No, I am far from pressing for them. I think that is a very difficult matter; I wish to express myself very tentatively on that subject. I do not feel able at present to press for it at all.

21,463. With regard to the further important question of admission to the communion, I wanted to get your views correctly. I think you say that any person who wilfully refused to accept the law of the church about marriage, and is married according to some other principles, should be liable to excommunication, and that no civil penalty should be attached to their being excluded from communion?—Yes, I always wish the Church to be as liberal as possible in the administration of law, but I think membership of the Church means at the last resort willingness on the part of any one member to submit to the discipline of the whole body.

21,464. Is it the case that at present all questions of refusal of communion ought to be in the first instance submitted to the bishop?—Oh, undoubtedly. The Church has never dreamed of a single individual pastor having the right to administer discipline.

21,465. So that it would be open to the bishop in each case, quite apart from the marriage that had taken place, to consider what you call extenuating moral circumstances before deciding that they should be excluded from communion?—I think so, yes.

21,466. So that the mere fact of the marriage taking place would not operate *ipso facto* in the exclusion from communion?—No, I think not.

21,467. (*Lady Frances Balfour.*) My Lord his Grace has suggested to you that if there are any alterations in the Divorce Act of 1857, that they might be required for the relief of the clergy. Would you wish that there should be any relief of the position of women; that they should be put on an equality with men in the matter of divorce?—I think there again it is very difficult. Speaking generally, I should greatly desire any equitable consideration which is extended to men to be extended equally to women; but I think the attitude of a man who believes the things it is proposed to extend to be bad, and not good, is naturally affected by that; and in this connection there is no doubt that the source from which the passage in St. Matthew comes (and therefore the exception which has had so great an influence on

Protestant opinion) was a Jewish source; and I have no doubt it was intended to give a facility to the man according to Jewish habit which it was not proposed to give to the woman, and I think that has very largely affected the consideration of the question.

21,468. I think England stands alone in making cruelty a necessity, as well as infidelity, in the case of a woman petitioning?—If you are deciding it on the basis of social considerations without regard to specific Christian law, I should entirely agree with you. I should entirely agree with you that there is no justification for that difference.

21,469. But the Christian law would ask for justice as between men and women?—Well, the Christian law disowns what it is proposed to extend, I think. That is what I mean. I do not think Churchmen holding my views are people to ask to extend, on the general ground, something which they believe to be bad.

21,470. Do you think the Christian law took this Jewish law into consideration and took that Jewish attitude which is certainly an unjust one—making the thing unequal as between men and women?—I am afraid I must say it again. If it was anything that Christianity regarded as a good, the great fundamental Christian principle would have prevailed with regard to it. I do not think you can ask Christianity to have a care for the equal distribution of something which it believes to be bad.

21,471. Bad in what sense? You mean that infidelity is bad, of course?—Divorce.

21,472. Oh, divorce is bad?—Yes.

21,473. You mean that Christianity in thinking it a bad thing must make it more difficult, and the woman must get it under more unjust circumstances?—Surely if you believe anything to be a bad thing you *ipso facto* cease to be solicitous for its extension.

21,474. I am not talking now of making it cheaper, but of making the law equal—that the act of infidelity should be equally punishable. As you know, the woman has to prove cruelty as well as infidelity in her husband. Do you think the Christian law contemplated that?—Oh, I think the Jewish law did undoubtedly.

21,475. But the Christian law has adopted the Jewish law?—I think in certain respects undoubtedly. I have no doubt that that particular insertion in St. Matthew had a Jewish basis. I think the Christian law would be perfectly equal for men and women, and would say you have entered into an indissoluble relationship and are equally bound till death. The Christian law would be absolutely impartial.

21,476. Then that clause which was put into the Act was accepted, of course, by the Church of England?—I do not think it was.

21,477. But I do not think any Bishop urged it should be altered?—The Church of England has been in one continual state of protest and agitation ever since.

21,478. But it occurs to me—perhaps being a woman—that that particular argument on those texts does not affect the woman at all, but the man's position only?—The text in St. Matthew?

21,479. Yes?—Yes, I think that they concern men only.

21,480. It is the case of a man putting away his wife?—Yes, I think so; that is what I meant.

21,481. Then is it not also clear that it is part of the discussion, and that we have not the whole view of Christianity on the position as to men and women? We only have the two texts. It might have been elaborated if somebody had asked with regard to the woman's point of view?—I do not think that does represent the mind of Christ.

21,482. Those two texts?—Those two texts in St. Matthew.

21,483. Towards the whole matter?—Towards the whole matter.

21,484. Of course the law has been based on those two texts, apparently?—No, the law was based on His great assumption of principle—the Christian law—and that great assumption of principle was perfectly impartial as between men and women.

21,485. "They twain shall be one flesh"?—Yes.

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21,486. But that is a contract?—I should not have called it a contract. I should have thought it was something much deeper than contract, to which contract was essential, but which in itself is not a contract.

21,487. Well, conditions that cannot be carried out if a man leaves the wife. That is so, is it not, that if a man deserts the wife he is not carrying out the contract, and so cannot carry it out, and *vice versa*?—That is perfectly true.

21,488. It does appear to one that the whole argument is based on two texts, and your Lordship has very rightly said you dislike taking isolated texts and founding a principle on them?—Well, to start with, there are five or six and not two about it—or seven or eight; a great many texts—the vast body of the New Testament; and the exception which admits of divorce in any case is based on two texts, or perhaps one text which is very confused in the matter of the readings—very uncertain in the matter of the readings—but it is the exception that is based on two texts.

21,489. But if you were to look at it from this point of view, which I am just for the moment, of the woman, there are also many other passages which are a difficulty with regard to the relations of wife and husband. There is the instance of the brothers being married to one woman, and so on, but which is not according to our Christian state or the Church view of matters at present?—The Levirate law?

21,490. Yes?—That was Jewish.

21,491. It was Jewish, and our Lord was speaking of the Jewish law, I suppose?—Yes.

21,492. And it was from the Jewish law that you think we have come to the position that the woman has the greater difficulty in obtaining relief if the contract is broken than the man?—In obtaining divorce?

21,493. Release from the contract which has been broken, I am putting?—You would not wish me to accept those terms?

21,494. I am only taking what has been admitted. Your Lordship has said it is a contract between the two. I think we have had evidence right through that the Church has never regarded it as needing the blessing of the Church, but that marriage is indissoluble because it is a contract.

(*The Archbishop of York.*) Might I say I asked the question, and both the last witness and this witness said, in answer to me, they thought that that was not a full statement of the Christian position.

(*Witness.*) Contract is essential to a Christian marriage, but it is not only a contract; it is a status into which you are admitted by contract.

21,495. (*Lady Frances Balfour.*) But if it is broken by desertion, and things that are worse, one might think of burdens that you canonists are binding on people which you will not lift with a finger. Of course it is a burden if the contract is broken and people are put into an impossible position?—I have said so often, that I think it must be wearisome, that I do not admit that Christian marriage is dissoluble, and therefore I say equality, but it is the equality of allowing divorce to neither.

21,496. Your Lordship said earlier that the Church was founded in a state of society very like our present one, with this exception, that it was admittedly pagan society, and our present society may be, I suppose, from your point of view, in a pagan way, though it is nominally Christian. The Church was founded in a real pagan society?—Yes, there is that great difference.

21,497. And you say that our condition is much the same, but that it is admittedly a Christian society?—Yes.

21,498. It calls itself a Christian society. It would not be pleased to be called a pagan society?—Oh, no. Just as I should think I was not a good judge of what the Roman Catholic Church ought to do, so I do not think I can ask any person who holds views I hold about marriage to say what actions those persons who do not hold those views, but who think that marriage is a dissoluble thing and that divorce in certain conditions ought to be allowed and encouraged, what action they ought to take as between men and women.

21,499. Let me take a concrete case that occurs to my mind. You may have a woman who is a Christian, and you may have her husband ill-using her in some sort of way. We have had evidence put before us, which is of course known to us all, that there are men who live on the prostitution of their wives. Now, is that a contract which has not been broken on the one side in the worst possible way? Are they twain one flesh; is that for better and for worse?—Yes, I am afraid so.

21,500. And is that wife to stick to that husband, she being a Christian, and to do as he commands her?—Yes, I am afraid so. She can get a separation, but not divorce.

21,501. She can obtain separation, but she must not obtain freedom of any sort?—She can obtain the protection of separation, but not divorce.

21,502. In which she breaks the contract?—In which the contract is regarded—

21,503. And the Church will permit that separation?—Yes, and always has.

21,504. (*Lord Guthrie.*) My Lord, do you think that all marriages entered into in England are indissoluble for any cause, or only what have been called Christian marriages?—Not all marriages, because of course Jewish marriages would not be, I suppose.

21,505. It is limited to Christian marriages?—I should certainly wish to maintain, and I think I do maintain, that the Christian principle of marriage has so obtained in English society that all marriages that were not specifically Jewish, or in which Christianity was not specifically disowned, were marriages contracted under the Christian sanction and were therefore Christian marriages. I should have thought you would have required evidence to the contrary before saying that any marriage in England was not a Christian marriage.

21,506. Then suppose a marriage entered into between a Christian and a Jew, would that be a Christian marriage—indissoluble or not?—There you touch a very difficult question, you know.

21,507. But it is a practical question, of course, Bishop—in this country a very practical question?—I should certainly have regarded any marriage contracted between a Christian and a Jew in a Christian country —

21,508. In England?—In England, as a Christian marriage. I should not (if you take a subject which constantly vexes missionaries, and which has been under discussion in Edinburgh the last few days) so regard a similar marriage undertaken in violation of Christian laws in India. An Indian Christian who should contract a marriage with a non-Christian would presumably know that he was contracting a marriage under Hindoo conditions.

21,509. Then the next step is supposing a marriage in this country between two Jews who became Christians, would their marriage be dissoluble or indissoluble?—I should have supposed, though I speak with great diffidence, that if they declared themselves Christians, and particularly if their marriage is blessed in church, that it is to be regarded as indissoluble.

21,510. Having been blessed in their own church?—No, if they became Christians and it was accepted in the Christian Church, that it would become indissoluble.

21,511. In what way could it be accepted or rejected in the Christian Church. It would have to be accepted. It is a good legal marriage between two Jews?—Yes, I think it would become a Christian marriage.

21,512. You are aware that those views are not the views of Mr. Watkins, whose book has been mentioned, and who does represent a large section of opinion, namely, that the only marriages which are indissoluble must come under two categories; they must have been consummated, and they must have been between two Christian persons in the sense of baptised persons; you do not sympathise with that?—I certainly should accept the principle that the marriage must have been consummated. That underlies the whole Christian principle with regard to marriage, running a great way back, I think.

21,513. Necessarily you accept, as we do in Scotland, the principle *consensus non concubitus facit*

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matrimonium?—I should be very much surprised to learn that in Scotland before the Reformation a marriage was regarded as valid unless it was consummated.

21,514. I am speaking of the present principle. You reject the principle that marriage can be made by consent. There must be consummation?—Yes.

21,515. And then the second step is that Mr Watkins lays down the indissolubility arises from the sacramental relation between two baptised Christian undertaking a contract of this kind?—I should be very surprised if Mr. Watkins held that a marriage between a Christian and a Jew was necessarily dissoluble. If he does I should dissent from him.

21,516. Then in that way you would not have a difficulty in dealing with Quakers or with Baptists who have not been baptised?—No.

21,517. That would leave outside the indissolubility of marriage in this country substantially only Jews, rejecting the few like Mohammedans and others?—I should hope so.

21,518. That would be the effect. In that way Bishop, you could not agree to the suggestion that has been made that seeing there are persons, Presbyterians and others—members of the Church of England and others—who do not share your views, that they should be entitled under a general statute to take their own course, leaving the Church of England to take its course?—I cannot claim liberty for my own convictions and the convictions of my own religious community without allowing the same liberty to other religious communities. I mean, for example, if the Quakers, let us say, wish to disclaim this principle, I could not reject their right to disclaim it.

21,519. That is exactly what I wanted to come to my Lord. You see on the Continent there are countries which provide means of divorce for Protestants, the Country itself being Roman Catholic?—Yes.

21,520. Do you see any reason why the persons of this country who do not agree with your Lordship's views, either of Scripture or of public policy, should not be entitled to continue to have divorce for adultery and to have it, let us say, for desertion—the Church of England, let me add, being left entirely free by express statute to take its own course with its own members?—No. I could never complain of that. Of course, as a citizen I should be quite against it and regard it as my duty to influence public opinion to the point when the nation should think it better to return to the strictly Christian law.

21,521. But supposing those people are conscientiously of that conviction, why should you fight against the law that gives them the benefit without imposing any burden on you or your Church?—You mean, why should not I support the system of things that exist now, or even some modification of it, provided the Church was given the exemption —

21,522. As to buildings, and so on?—Yes. Well, your Lordship is fully well aware that there is no subject like marriage for tangling up the relations in general of society. We must, no doubt, accept as social law the best that the common opinion of the nation can give. But your Lordship will admit that anyone who holds what I hold about the position of matrimony and the whole constitution of society, would be very loath to see or sanction any serious divergence between State law and the Christian law.

21,523. Certainly. Might I suggest, Bishop, that really it comes to this, and it seems to me you are perfectly logical in the answers you have given; you consider that to dissolve such marriages as we have been talking of is a wrong thing?—Yes.

21,524. And involves sin?—Yes.

21,525. That being so, when you are considering a proposal to passing a statute you first consider, is it anti-Christian, if it is anti-Christian, that is an end of it, I suppose. If it is not anti-Christian, but the matter is left open, then you consider it from the point of view of public policy. But if you think it anti-Christian, I suppose you would oppose it entering the statute book for anybody?—Yes, as long as I can. I am very loath to accept the position; I think I am bound to be very

loath to accept the position that England and English society is specifically repudiating the Christian basis.

21,526. Yes, quite. You have several different positions. If a thing is prohibited by Christ—supposing that is clear—you have only one duty for the nation as a citizen?—Yes.

21,527. If it is left open by Christ, then you consider public policy?—Yes.

21,528. It seems to me your position is thoroughly logical, and would not this be the very conclusion with regard to extension and justice? Supposing, for instance, the State regulation of vice should be introduced in this country—as it never will be?—Yes.

21,529. Supposing it was found that that only, as it is called very foolishly, protected the rich?—Yes.

21,530. And it was arranged so as to sweep in the poor, of course you would object to anything of that kind?—Yes; exactly as I am objecting now.

21,531. On the ground that injustice is one thing, and sin is another?—Yes.

21,532. And injustice is better than sin?—Yes.

21,533. It seems to me a perfectly logical position. I suppose the view we take in the civil courts would not be dissented from by you with regard to the Christian question, namely this: in considering any utterance of Christ's we must, must we not, consider exactly what was the question under discussion in reference to which He speaks?—Most certainly.

21,534. You see it happens every day in the courts that the opinion of a great judge or a great authority is quoted; the judge at once asks: What was he talking about; what is the context?—Yes.

21,535. And the general opinion by a great jurist or a great judge is represented or controlled by the particular circumstances?—Yes.

21,536. Do you agree with that?—Entirely.

21,537. Now what was the question Christ was discussing?—Well, it was a very much agitated question amongst the Jews. As we have heard, there was the school of Shammai and of Hillel, the stricter school and the laxer school; and His disciples asked Him: Is it lawful for a man to put away his wife; what do you say about it?

21,538. That is Mark and Luke. St. Matthew, as we have it, introduces a different question?—St. Matthew, as we have it, in the one place introduced the question in the same context, but introduced it with the question modified, "Is it lawful for a man to put away his wife for every cause?" Then in the other passage in St. Matthew, in the fifth chapter, the question of divorce is introduced in a different context, as a revision of the Jewish law of marriage.

21,539. But as we have it in both cases with the same saving clause, "except for the cause of fornication"?—Yes.

21,540. That being so, was not the question put to Jesus Christ simply this: Shammai or Hillel? That was the question He had to consider, was it not?—No.

21,541. Why not?—He declined that and carried them back behind both. I do not think His answer is intelligible on that basis, because both Shammai and Hillel would have repudiated His statement, and that is what astonished the disciples and made them say: If the case of a man is so with his wife it is good for him not to marry.

21,542. But I cannot see that as a lawyer. Was not the astonishment of the disciples quite easily accounted for on another hypothesis? He says: "Put away your wife for every cause! Certainly not; it must only be for grave moral causes"; and then they said: "Oh, if that is so, we need not marry at all." What do you say to that?—No, I do not think it would have caused any astonishment at all. I do not think the disciples would in the least have been led to expect that Christ would take the laxer of the two views. Probably the opinion of all the best of the Jews would have gone in that direction, so I do not think there would have been any cause for excitement or astonishment at all if He had not gone far behind both views.

21,543. That is on the view that the disciples were all followers of Shammai; is there any evidence of

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that? They may all have been followers of Hillel?—We do not know about that. I do not think there would have been any astonishment unless He said something far deeper than either Shammai or Hillel.

21,544. The precise question, however, which was put had reference, had it not, to an entirely different state of circumstances, and to an entirely different state of the law either from what exists in England now or from what is proposed to be brought in?—Yes, there was a great laxity, I suppose.

21,545. There were three great distinctions, were there not? In the first place, the only right was to a husband?—The Jews were slow to admit a wife's right to divorce her husband.

21,546. In the second place, it was a right which was not controlled in any way by any tribunal before whom he had to prove anything?—Yes.

21,547. And in the third place, he did not require to have any moral fault against his wife at all?—Yes, according to the laxer view.

21,548. That is a very different question, is it not, from the question whether a husband or a wife shall be entitled, if they can prove such grave moral fault as makes a continuance of the marriage tie reasonably impossible before a competent court by the strictest rules of legal evidence? That is a very different thing, is it not?—It is very different, but I should have thought you could have put the *à fortiori* in the other way. I should have supposed, I mean, that the fact that He was speaking in an age when divorce was very common might reasonably have been a motive to One Who was equity itself—to One Who certainly never made His laws or regulations of human life needlessly strict—it would have been a motive for making His laws as moderate as possible. I should have thought the really noticeable thing was that on this subject only, or almost only, Jesus Christ seems to have legislated, to have said: Because there lies at the bottom of human life the need for this very difficult precept, therefore I lay it down with all its tremendous severity.

• 21,549. You have just made a very important observation, Bishop. "In this case only, Christ legislated." Is it not a fact that Christ came, as Bishop Creighton put it, not to initiate laws, but to lay down great general ideal principles, exceptions to which each age must fix for itself?—That is what I think is so profoundly true generally—

21,550. Then is this the only case where you can say He legislated?—Well, perhaps "the only" would be bold, but I think it is almost the only. I always think this subject is the great exception, and I think that it is best restricted by St. Paul's words. He is perplexed about the problems of marriages, and he says, "Unto the married I give charge, yea not I but the Lord, that the wife depart not from her husband (but if she depart let her remain unmarried or else be reconciled to her husband) and that the husband leave not his wife," as if the whole Christian Church was conscious that there they had behind them something that was inviolable and unalterable.

21,551. But you do not object to take the subsequent verse, namely 15: "If the unbelieving departeth let him depart: the brother or sister is not under bond—age in such cases: but God hath called us in peace." Whatever is the right view, that has been interpreted by competent scholars, has it not, as involving divorce and remarriage?—Well, I think there is hardly any absurdity that has not been held by a competent scholar; but I cannot say that, frankly, I think there is any plausibility in the view which assigns any meaning to those words at all, except that they concern a marriage undertaken by non-Christians.

21,552. But it is the case that the view I indicate has been held by competent scholars, and is held now?—Perhaps.

21,553. Tell me this, in what sense do you say that Christ legislated in this case, and did not legislate in the following cases: Matthew v., 34, "Swear not at all"; 39, "Resist not evil"; 40, "If any man will sue thee at the law, and take away thy coat, let him have thy cloke also"; 42, "Give to him that asketh thee"; Chapter vi., verse 19, "Lay not up for yourselves

"treasures upon earth"; then 25, "Take no thought for your life what ye shall eat." Is it not the case, that all those great and beautiful principles are held necessarily to involve exceptions—except by the Quakers—which will vary from time to time, each age trying to lead on to the time when they can be taken literally and absolutely. Why do you distinguish this question of divorce from all these?—I quite admit that is the old and world-wide difficulty about the teaching of Christ. Everybody must admit that He taught by parables mostly, and by proverbs, and that proverbs are almost always put in terms of generality; but I think there are certain occasions on which He did more than enunciate principles in the form of proverbs. There are a few occasions on which He laid down laws which are intended to afford certain limitations to His society. I should have thought that He laid down the law of baptism; that He laid down the law of communion. I should have thought He laid down the law of marriage. My justification for thinking that is simply what I should maintain to be a necessary principle for interpreting the New Testament as a whole, and that is the consentient mind of Christ's society from the first that on this question of marriage it had this word of the Lord to fall back upon.

21,554. Apart from that, can you suggest any reason why He should depart from His ordinary rule and lay down, when asked a partial question referring only to a man, a legislative code with regard to marriage?—Hardly a code.

21,555. Well, that He should legislate. Why should He legislate with regard to marriage and not with regard to those other great matters to which I have referred?—Well, I suppose you may say it is not competent to a Christian to swear or to do these things—they all become a basis of specified Christian duty; but I do think it was because of its central character that He did legislate with regard to marriage; and I think that what justifies me in thinking that is, as I say, a fundamental belief and conviction of the Christian society from the first.

21,556. Is not the result this, Bishop, that you are applying to this question of Christ's utterances on marriage exactly the same principle which, I suppose, most of us reject when applied by the Quakers—first, to take oaths; secondly, to physical fighting or litigation; and thirdly, to doing reverence to authority. They literally construe it, and say they are absolutely legislative enactments admitting of no exceptions whatever. Are not you doing just the same with regard to His utterances on divorce?—I should not have thought so. I should always ultimately say that the mind of the society must guide one; but also I should have thought that merely from a literary point of view here He has entered into the region of legislation, and into the region of current dispute, and that He did use language which was understood to have a quite definite meaning, and to be laying down a startling maxim.

21,557. Well, we have your view. Now let us come to the question of the two passages in St. Matthew's Gospel, the Vth Chapter and the XIXth Chapter. Is there any reason why St. Mark's account and St. Luke's account should be preferred to St. Matthew's?—The whole drift of modern investigation has gone (with some approach to unanimity) in its analysis of the synoptic Gospels, to finding the ground documents to be two, St. Mark and the source (Q).

21,558. I quite understand that, but in themselves it is the fact that in St. Matthew's, as distinct from St. Mark and St. Luke, you have two accounts, ordinarily valuable in both, confirming each other. In the next place, it is the fullest account of the interview that took place—the one in the XIXth Chapter?—Well, it is shortest in certain respects.

21,559. I have had the curiosity to count them, and I see in St. Mark, which is much shorter than St. Luke, there are 173 words; in St. Matthew there are 256. It is the fullest account. I am right in that, am I not?—Yes, I quite accept that.

21,560. Then, thirdly, St. Matthew was himself a bystander and heard the words. Did either St. Mark or St. Luke?—There again I should say that it is highly probable that the original document, which is

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called "Q," being the first letter of the German word "Quelle," the source of St. Matthew and St. Luke—it is highly probable that St. Matthew the Apostle compiled that document, but it is as certain as anything can be that St. Matthew the Apostle did not write the first Gospel as it now stands before us in its completed form.

21,561. Is it the fact that all the manuscripts have this saving clause, "saving for fornication"?—I think not all; but I think substantially all.

21,562. Mr. Watkins says all?—I do not think any respectable critic has proposed to turn it out.

21,563. Then you do not remember any manuscript that omits the words. Mr. Watkins says it in them all?—I am quite prepared to admit that. I have said repeatedly it is an integral part of the text.

21,564. Then, so far as the early writers quote the passage from St. Matthew, they all quote it with this clause, do they not?—Oh, yes; you may say there is no controversy among serious people as to this being an integral part of the text of St. Matthew as we now have it.

21,565. Then you are not applying the ordinary rules of criticism in determining this passage, namely, by comparison between manuscripts which are authentic, and so on?—I say, in the whole drift of modern criticism—

21,566. But there is no element of the ordinary question of comparing manuscripts. All the manuscripts of St. Matthew, and all the reports of him in early writings, hold the clause?—As far as I know, there is no controversy about it being part of the first Gospel.

21,567. You see, I teach a men's Bible class. You propose I should tell them that this is not authentic?—I must say that first of all I am bound to believe whatever is true, whatever the inconvenience is.

21,568. By a process of reasoning?—Yes, I think we are bound to tell men's Bible classes, and all kinds and sorts of persons, the truth about this matter.

21,569. You see, your Lordship said this with regard to the Sermon on the Mount: "They all appear in both passages to make an exception (Chapters V. and XIX.) and the exception would seem to sanction, or, more strictly, not to prohibit the re-marriage of an innocent man who has put away his wife for adultery. Various attempts have been made to obviate the force of this exception. But to the present writer they do not commend themselves satisfactorily." That was your Lordship's former opinion. What has arisen to alter your view so clearly expressed there?—I have just been writing a new preface to that book. I am not prepared to alter it. I still think exactly the same about the first Gospel considered by itself. What I have gone on to say is that I should wish to express a different opinion on the relation of the statements about divorce in the first Gospel to those given elsewhere, and in that change of view as to the relative value of documents I am following a consent of recent critics.

21,570. Your view, does it not, results in this, that we can no longer appeal to those texts in St. Matthew in support of the dissolubility of marriage on the ground of adultery?—Not as being the original teaching of Christ.

21,571. Then if they are not, we cannot rely on them?—You can say that this gained an admittance into the Christian Church. You cannot, I think, say that this really represents the original teaching of Christ.

21,572. Have any of the versions, revised or others, corrected or removed those texts, or indicated in the margin that there is any doubt about them?—None of them could. There is no doubt about them as having their place in the first Gospel.

21,573. No; but as to their being original. We know the case of the woman taken in adultery; we know all the doubts, and they are expressed and you have them circumflexed as doubtful. Is there any indication by any editors in any version you know of as to a doubt about these clauses?—Those are two completely different questions. "The woman taken in adultery" is proved by various considerations not to

belong to the text of the fourth Gospel. There is no contention that these words do not belong to the text of the first Gospel.

21,574. I was asking, Bishop, has anybody removed these clauses, or indicated that they are doubtful as having been uttered by Christ or not?—Oh, no. There would be a whole class of passage in St. Matthew with regard to which critics would say that they do not attain to the dignity or authority which belong to those things which belong to the first report.

21,575. Surely, Bishop, this is not a question of dignity or authority. This is a view that Christ never said these words?—Never made this exception.

21,576. I asked that question in relation to your own statement in the book I referred to, at page 216: "It is not time to deprive the people of the right to appeal to an accepted text until some trustworthy editors have been found to venture to remove it from its place." Now, no trustworthy editors have done so, and yet you propose, do you not, to deprive the people who take a certain view, of the right to appeal to those texts?—I quite admit that my view has somewhat altered since I wrote that book as to the relative authority of the different passages. I still think it always will remain a fundamental difficulty—the fact that that exception is in the Gospel—and I think that always in equity consideration must be had of that fact; and that would always affect me ultimately in dealing with the persons who appealed to that view—always. That is why I am able to accept the decision with regard to Communion of the Lambeth Conference. That is perfectly true. I should always maintain that the existence of this (though I think it is a gloss accepted by the Jewish Christians and incorporated in the first Gospel) always gives a claim to consideration which the Western Church generally has not sufficiently acknowledged. Yes, I quite see that.

21,577. Would not you go as far as this, Bishop, that it leaves the fact that what was Christian opinion so uncertain that the State is free to determine the question on questions of public policy?—No, I do not want to speak too strongly, but I have given a great deal of thought to this subject.

21,578. It was quite unnecessary to say that, Bishop. We know that very well?—And I do sincerely think that the other is the mind of Christ.

21,579. I notice that Tertullian in a very short sentence says this: "No appeal should be made to the Scriptures, no contest should be founded on them in which victory is uncertain." Does not that apply here, do not you think?—I know that passage in Tertullian very familiarly. His point there is that what you ought to appeal to is something bigger than texts, and that is the Church.

21,580. Exactly, I am coming to that?—And I do think there would be hardly any early passage that would have equal force with that particular and incomparable passage of Tertullian in saying that what you have really to look to is the mind of the society; and I think it is the mind of the society which was so distinct from the first as to the indissolubility of marriage.

21,581. That comes to this. Tertullian's view leads to this: are we to look to tradition (or what you call the mind of the society), or are we to hold that the matter is open and you think we must look to the mind of the society?—I think you must always regard the mind of the society as giving a guidance in the interpretation of Scripture.

21,582. Would you agree with the view Mr. Watkins puts on page 151, when he says this: "Perhaps the most important, certainly the most difficult of the questions which have been raised with regard to Christian marriage is the question whether under any circumstances short of death it admits of dissolution of the marriage bond. The evidence of Holy Scripture is difficult to understand. The appeal to Christian tradition is not quite uniformly answered, and from the standpoint of reason it may be considered that there are arguments of weight on both sides." Would you agree to that view?—Do you really mean that Mr. Watkins says that?

21,583. That is the value of it—from the point of view I am suggesting—that he is so fair, although he

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has his own strong view—that he thus expresses it?—The words are not familiar, I should like to see them.

21,584. Certainly; I have put a pencil mark in the margin there (*book handed*). He takes it under three heads, Scripture, tradition—?—I imagine that he is there, as it were, stating as a man does naturally state a case against himself with force. I should not have said what he does, I own, if that is meant to be the summing up, and not a statement of the question at the beginning of the chapter. If that was meant to be the summing up, I do not think I should say that the evidence of Holy Scripture is very difficult to understand.

21,585. He does not say “very.” He only says “difficult.” Would not you accept that?—I do not think the evidence of Holy Scripture is difficult to understand. Of course, Mr. Watkins would not accept the critical principles that I do accept. I think on those principles it is fairly easy to understand: “The appeal to Christian tradition is not quite uniformly answered.” That is true. It is true about everything. There is no such thing as absolute uniformity. I should have thought there was extraordinary consistency about it until the fourth century.

21,586. There were some of the Fathers who took a different view?—Yes, a lot of the Fathers of the fourth and fifth centuries. Hardly any up to then.

21,587. But in the fourth and fifth centuries did some take the view that marriage was dissoluble for that one cause?—Oh, yes. That is a most certain fact of history.

21,588. And St. Augustine himself varies in his view in different writings, does he not?—Yes, it was one of the points on which St. Augustine changed his mind.

21,589. Then do you adhere to the view you expressed at page 216 of the book, “The Sermon on the Mount,” when you said: “The opinion of a great number of the best English divines and commentators on St. Matthew has been expressed in favour of allowing the re-marriage of the innocent party after a divorce for adultery.” Would you still wish to call them “a great number of the best English divines and commentators on St. Matthew”?—Yes, I should think that would be admitted. I think you know, in fact, that it is one of those cases on which a very great light has been thrown by the rather revolutionary proceedings of modern criticism. I think it has put it in a quite different light. I think as long as the people started with the four Gospels on a level, as it were, and did not analyse the sources, they were landed in a perplexity. I think it is the analysis of the sources that has illuminated the matter.

21,590. Is there not another matter, namely this, that the words forming the exception are so unlike Christ's ordinary method and bear such a resemblance to legislation, subject to exceptions, that it is extremely improbable He ever uttered them?—Yes, that is one of the things that has been very often said.

21,591. Suppose they are not authentic, do you attach no value to them as showing that they in the mind of St. Matthew, or whoever put them in, represented what he believed to be Christ's view?—Oh, certainly; I think it is exactly from that point of view you must attach value to them, and that gives a sort of equitable claim to them.

21,592. Quite. Is not that of enormously greater weight than any of the subsequent Fathers? Is there anything in the exposition but that?—It is not an exposition. I should have thought it was the mind of a certain Jewish part of the Christian society, which received expression in the first Gospel and was accepted by the Church as part of that Gospel.

21,593. But, Bishop, it is one of two things. Either it was put in because it was believed to represent Christ's view—whether He said it or not—or was put in believing it did not represent Christ's view and was a fraud. You do not take the latter view?—I have no doubt it was put in by people who thought it represented Christ's view.

21,594. Is not that the best tradition—people living at the time?—No, I should have thought that on a great number of points the Jewish tradition in

the Church was not the best or truest expression of the mind of Christ.

21,595. It is not tradition, but it is put in by somebody—we will take it St. Matthew—who heard the words, and who thought that the words he put down represented Christ's meaning?—Yes, if you thought that these words were put down by one who heard them it would make the greatest possible difference. But the whole of the modern drift of criticism says that if you want the first report, that which gets nearest to the eye-witness, you go to St. Mark and to the common source, the “Q,” and those people who follow the course of modern criticism would hold that in the passages peculiar to St. Matthew you definitely get things a stage further removed from the original witness.

21,596. But that is not my point. I am assuming Christ did not utter these words; does it not show that St. Matthew believed that Christ was making that exception?—Not St. Matthew, but—

21,597. Well, whoever did it. Let me get from you what you think was the date of St. Matthew?—Oh, I do not know that anybody can say more than it was quite early. I think myself you cannot put it very much after the destruction of Jerusalem, simply because there are no signs at all in it of any expectation of an interval between the destruction of Jerusalem and the end of the world.

21,598. What would you give as the latest date?—It is not one of the fixed things amongst critics, but I should have thought between 70 and 80.

21,599. At the time when persons were alive who had known Christ?—Yes.

21,600. Is not there a very great deal to be said for the view that that represents what they thought conscientiously was Christ's view, whether he uttered the words or not?—Certainly.

21,601. Is there any support of the Church, or tradition of the Fathers, or anything to compare in weight with that?—Yes, the direct utterances—the earlier utterances. If you had not got the earlier utterances, I agree. The earlier utterances of St. Paul and the first Gospel records—utterances which are, I should contend, incompatible with that view—maintain with great distinctness the indissolubility of marriage, and the mind of the Church adhered to the earlier utterances, and not to the Matthean exception.

21,602. What inconsistency is there between the sets of texts? Is it not the fact that in reading the New Testament, whether Christ or St. Paul, there are many passages where exceptions must be read in as well as in this case?—Yes, I do not think you can read in an exception when the exception alters the whole situation. I think there are many cases where you can talk in generalities because the exception does not alter the whole situation. I think if Christ really meant to allow divorce in the case of adultery the exception so much alters the case that—

21,603. He would have said so?—It does make a great difference. You can hardly say the rule without the exception, and the rule with the exception are merely one of the ordinary cases of something more or less explicitly stated.

21,604. But if it be the fact that the words are original, then what do you say?—I should say that the other reports would be then quite unintelligible. That is what I have come to feel with increasing force.

21,605. But which would be preferred, St. Matthew?—If that was the original?

21,606. Precisely?—Yes, of course I am bound to prefer whatever is the original utterance of Christ on the principle of what you say.

21,607. “It is a law of interpretation that a command with a specific qualification is more precise than a general command without any specific qualification, and that the one where the qualification occurs must interpret the other”—where this qualification does not occur?—I have just written revoking precisely that, because I think that is based on a false basis of argument, namely, that you take all the texts on a level. That would be quite true if all the texts were on a level; but I feel increasingly sure that all are not on a level, but that the three first witnesses are

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nearer the fountain head than the other, and therefore to be preferred.

21,608. Just take a specific case. How do you justify war or private conflict on your principle in looking at the words "resist not evil"?—Well, I really do not feel any difficulty about that. I think our Lord habitually taught by way of proverb, and it is always the way of proverbs to be expressed in generalities.

21,609. That is what one thinks here?—But I do not think this was a proverbial utterance. It is a categorical and explicit statement. None of the writers of the New Testament used the method of parable or proverb; but you find St. Paul repeating this, not as a proverb, but merely as a prescribing utterance of Christ.

21,610. But the Sermon on the Mount; "Swear not at all," and so on, is not parable?—I should appeal to the general judgment of the Church to distinguish one class of utterance from the other.

21,611. Take another argument. Are not there passages in the New Testament which are evidently setting out a great ideal and which must be accommodated to the hard necessities of the time, for the hardness of our hearts?—I think you would not wish to adhere to the phrase "for the hardness of your heart," because it was exactly for that that our Lord said He was no longer going to make this exception. "Moses from the hardness of your heart": "but from the beginning": "and I say unto you." I do not think anybody can be more impressed than I am with the difficulty of the law of the indissolubility of marriage, but at the same time the more I look at Christian society the more I believe if Christian society is to be the salt of the earth it must stand for that. It is its difficulty which makes it valuable.

21,612. Are the hearts of the people of this age any softer than the Jew's were?—What I meant was that our Lord, in spite of the hardness of men's hearts, gave us a hard precept: Moses, because of the hardness of your heart gave you a lower law, but I say unto you—

21,613. Are there, any passages, do you think, which correspond to what I have said about the ideal being set out although impossible of realisation?—I would not say "impossible," but "hard."

21,614. I notice you say with regard to St. Paul: "St. Paul is expressing the moral ideal; while law must be largely content with preventing outrage and securing the background in which ideals can become possible." To the layman it strikes one as close to this case?—I think all marriage laws go back to the fundamental question whether there was a governing law on this very difficult subject delivered. I do not think there ever was any state of society in which it was more difficult to maintain the principle than in the first century. I do not think it can be more difficult to maintain the principle now than it was in the early Christian generation.

21,615. You have mentioned what was done by the writers as to Matthew. What is the next evidence in your view? Is it St. Paul—with regard to date, I mean?—St. Paul would be first of all.

21,616. But before St. Matthew?—St. Matthew would be the latest. St. Paul would be the first of all in order of time.

21,617. In your view is it not a fact that St. Paul introduced by his own hand an exception for which, if you take what I may call a Judaical interpretation of Christ's word, there was no ground?—Which exception?

21,618. The Pauline exception?—Which exception?

21,619. The case where the brother who believes has a wife who departs from him. Was not that introducing by Paul an exception to the strictest construction?—I do not think so. I do not think Christianity had anything to do with marriages outside the Christian society.

21,620. So it is because it is only with regard to marriages of the Christian type that you say that has no application?—Quite so.

21,621. Is that also a question that is in dispute as to whether St. Paul only contemplated marriages entered into before conversion or intended to include both those before and after conversion?—I do not

know it was in dispute. I thought St. Paul was contrasting marriages, "in the Lord."

21,622. Does that necessarily follow? He merely says, "Brother who believeth." It has been assumed that that necessarily only applies to the case of a man who is married before he becomes a believer. What authority for that is there in the passage?—I am very sorry; I did not think it admitted of any other view.

21,623. The words are, are they not, "If any brother have a wife that believeth not"?—That would be the natural situation. He is talking to people who have just been converted, and in view of the obvious difficulty of one being converted and not the other.

21,624. His words are quite general. You are going back on my principle. His words are quite general?—He is writing to people who had been converted a few years before at Corinth. The situation is an obvious one, "If any brother have an unbelieving wife." That obviously means that he had been converted and she had not.

21,625. My question is, why should not that apply to a brother who had married an unbelieving wife after his conversion?—But he would not have been allowed to. Let him marry whom he likes, but always in the Lord. St. Paul would not contemplate a Christian marrying a non-Christian.

21,626. But the Corinthian Christians did a good many things that he did not contemplate?—He is not contemplating it there; at least, I should venture to think so.

21,627. (*Sir Lewis Dibdin.*) I will cut my examination as short as I can, and I propose to deal with only one point. Your evidence was challenged really as to whether the view of the Church had been practically on the side of the indissolubility of marriage?—Yes.

21,628. I think the opinion of the Church divides itself, does it not, into two categories: opinion proper, and the law enforced by the Church?—Quite so.

21,629. Had there been more time I should have liked to have asked your Lordship some questions as to the opinion entertained with regard to this; but wanting to close my examination as quickly as possible, and regarding the other as more important as far as I am concerned, I am going to confine my questions to the law enforced by the Church. You have laid very great weight on the 107th canon?—Yes.

21,630. I suppose you would not confine your view to the 107th canon—I mean the law of the Church goes back, does it not, a long way behind the 107th canon of 1603?—Oh, undoubtedly, but that obtains its force as reproducing and embodying—

21,631. I will come back to that canon directly, my Lord. But I suppose it is not open to doubt that we do not know, do we, the date when Church courts were organised so as to deal with these matters, but it was at an early date?—Yes.

21,632. We do not know the date, do we?—The treatment of them begins in councils.

21,633. With regard to that which I had got rather in the category of opinion, but perhaps wrongly, the canons and councils at a very early date begin to lay down the indissolubility of marriage with very fair consistency, do they not?—Yes, certainly.

21,634. And the authoritative documents which take a looser view with regard to indissolubility are very largely the Penetentials, are they not?—Of course there are the Eastern commentators on Holy Scripture, and particularly on the passage in St. Matthew.

21,635. But I will not deal with commentators, because they are clearly opinion; but on matters that are *quasi* law; we have the canons and the Penetentials?—Yes.

21,636. I do not know whether your Lordship is familiar with Esmein's book on the subject?—Yes, I am.

21,637. Perhaps I may ask you, if you agree with his view that while canons of the Council represented the ideal of the law that the Church wanted to initiate, the Penetentials represented what the Church was bound to do in the presence of a heathen nation in the case of particular individuals?—Yes, I think you have to recognise that the Church was struggling with a great body of barely Christian opinion, and that it was

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anxious at all costs to keep them inside the Church, and therefore when it came to the question of absolving individuals it went very far in the way of concessions.

21,638. And to be candid we must admit, must we not, that it did make concessions and did not nearly come up to the ideal of the canons in particular cases?—Oh, quite; certainly.

21,639. And that is an explanation, is it not, to a very large extent of the passages like those in Theodore's Penetentials, which do seem inconsistent with the broad principles of the canons themselves?—I should have thought, no doubt. Of course the whole level of morality represented in Theodore's Penetential is low. Even when Anselm came to England he said that anybody who thinks to introduce Christian principles of moral discipline into England is very much mistaken.

21,640. Now, passing from that we come to the time of the Ecclesiastical courts and canon law?—Yes.

21,641. And there is no doubt at all that the law enforced in the Ecclesiastical courts, from the time there were any, was divorce *a mensa et thoro* and nothing else?—Yes, I believe so.

21,642. May I remind you, in order to summarise a great deal of the old canon law of what Lancellottus says, who, you remember, was a commentator of canon law and was regarded as so authoritative that his work was bound up nearly always with the "Corpus Juris Canonici"?—Yes.

21,643. You remember, he says this in Book 2, chapter 16, section 9: "Ob fornicationem carnalem vel spirituale non solvitur matrimonium sed fit separatio tori"?—Yes.

21,644. That puts the proposition in its baldest form?—Yes.

21,645. And it was the law, was it not, administered in the Ecclesiastical courts in England?—Yes.

21,646. That was part of the canon law received here?—Yes.

21,647. That brings us to the Reformation, and divorce was exclusively a matter, was it not, of the Church courts; and when we find out what the law administered was in the Church courts, then we find out what was being done by the Church in divorce, because that was the tribunal dealing with it?—Yes.

21,648. Then we come to the Reformation; and the effect of the Reformation—25 Henry VIII., chapter 19—was, was it not, to retain all such parts of the old canon law as had been received in England and were not contrariant to statute law?—Yes.

21,649. There was no statute passed at the Reformation which dealt with divorce in the sense of allowing divorce *a vinculo*?—None, so that the law remained.

21,650. The old law remained?—Yes.

21,651. Having been received in England and not being contrariant to the statute?—Quite so.

21,652. Some doubt has been expressed whether after the Reformation divorce *a vinculo* was not granted by the courts, but I put it to you that there was no way in which it could be granted?—Quite so.

21,653. They had the old canon law and nothing else?—No, there was no basis for the conception of divorce *a vinculo*.

21,654. It is hardly fair to expect you to remember it, but since the Reformation the practice of the Church courts is given us in Oughton's "Ordo," is it not? Perhaps your Lordship will take it from me?—Yes.

21,655. Oughton published his book in the 18th century?—Yes.

21,656. Nearly the beginning of the 18th century?—Yes.

21,657. But I think probably your Lordship will remember this, that Oughton was regarded in his profession as a thief—as a man who stole for the purpose of publication what until then had been the choice and sacred possession of Doctors' Commons?—Yes.

21,658. Of the ecclesiastical profession?—Yes.

21,659. And there exist now manuscripts which are really the same as Oughton's book, of long prior date to the first edition of Oughton, but which really contain exactly the same contents as Oughton's published book?—I did not know that.

21,660. Perhaps your Lordship will take it from me that that is so. I happen to possess one of those manu-

scripts, which can be dated between 1590 and 1597 by internal evidence. So that your Lordship sees that is exactly the half-century that is important before you begin the time of private Acts of Parliament?—Yes.

21,661. Now Oughton, and also this manuscript, deals with divorce, and I want to put to your Lordship just one sentence which he has, under the title "Divorce Decrees." After stating what they can be granted for, namely, divorce *a mensa et thoro*, both the manuscript writer and also Oughton put in the margin "ratio," the reason of the rules they have just given, and it is this: "Quia vinculum matrimoniale (matrimonii semel perfecti) non potest ab homine dissolvi nisi morte naturali"?—Yes, an absolute principle.

21,662. I suggest that is an absolute categorical statement of the impossibility of divorce *a vinculo* within the half-century after the Reformation?—Absolutely.

21,663. Then when we get into times as to which records are preserved, is it not the fact that there is no record of any case at all in which divorce was granted except *a mensa et thoro*?—Absolutely.

21,664. And that goes on up till 1857. Now I put it to your Lordship, whether that is not really the evidence of what the law of the Church of England is in its compactest form?—I should have thought so, and I should have thought the same might be said of the private Acts of Parliament; that private Acts of Parliament were resorted to because, apart from such privilegia, remarriage was impossible.

21,665. Dealing with the canon of 1603, that should be read in the light of the practice we have been talking about?—Undoubtedly.

21,666. In the light of a practice which did not admit of divorce *a vinculo* at all?—Yes.

21,667. The reason why I ventured to put to you what I have rather than let your evidence rest entirely on the canon is, that I think you will agree with me that the canons generally of 1603 are not vehicles of Church teaching. They do not lay down Church teaching for us, but are rules for enforcing Church law that existed otherwise?—Yes.

21,668. I venture to think that is a most important thing to bear in mind with regard to the canons of 1603. Is it not the fact that canon after canon refers to the particular Church law (or sometimes the Act of Parliament) which it was intended to enforce. They were not intended to contain laws in themselves?—No, undoubtedly. I should have thought that would apply to canon law very widely. That is why canons repeat themselves so often, whereas a statute would not be passed again and again, because when a council meets it always has behind it a body of law and custom, and its object is to apply and use it.

21,669. I am very sorry so late in the day to put these dry things to you, but I feel it is my duty to do so. There is only one other matter, and that is the *reformatio legum*. It is put to you again and again—and it has been put to other witnesses—that there you have crystallised the opinion of the reformers at the critical date. Is that your view of the *reformatio legum* that it really represents the opinion of the Church of England at any time at all?—No, I should have thought that was a quite untenable view of it.

21,670. I should like to ask you whether we have the *reformatio legum* in the sense of a document which was really passed and adopted by any of the various commissions who undertook to frame it. Do we possess it in that shape?—I should not like to talk about the *reformatio legum* without having a little time to prepare myself.

21,671. Then it would be wrong to bother you with it?—I think I should rather not.

21,672. Of course, I appreciate the view you have stated to Lord Guthrie that your opinion as to the indissolubility of marriage is really marriage between baptised persons, to put it shortly?—Yes, primarily baptised persons.

21,673. And does not apply to marriage of non-Christians?—No, unless they are marrying with what I may call a Christian intention.

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21,674. On that it is very naturally put; then why object to the State, which has to legislate for Christians and non-Christians, making a wider law in the interests of public policy for non-Christians. But is not your view, which is founded primarily on our Lord's legislation, governed by this, that Christian people are bound to assume that our Lord's regulations represent the highest public policy for the country?—Quite so, and, in fact, the policy on which our civilisation has been based and has rested. We should be very loth to admit that a view of marriage can be non-Christian and at the same time the basis on which we rest our legislation to-day.

21,675. Or put it the other way, that the Christian view cannot represent anything else but the highest public policy?—Quite so.

21,676. If that is so, you would say, would you not, that it is quite consistent with the position of any citizen to oppose any alteration of law which in his view is against public policy, although the persons for whom it is proposed may not be governed directly by the Christian law?—Yes, I should strongly hold that.

21,677. (*Chairman.*) I want to ask you a few questions arising on what has been put to you, and I hope they will not weary you. I only want to refer to a few passages. I want to ask you whether you think your view of the indissolubility of marriage really expresses anything more than the view of yourself and some who think with you, and not the view of all the Church?—I think I should like largely to refer first of all to what was being brought out by Sir Lewis Dibdin. He has put in a very forcible way the fact that what lies behind the particular canon is an extraordinarily strong tradition of law. My point is that that old tradition of law is what is represented in our present formularies, and though for a time under Erastian tendencies a great many of our leading churchmen departed from it, we have come back to it, and we find it there unaltered, and in present conditions certainly unalterable.

21,678. Might not I suggest that that idea which Sir Lewis has put before you just now was derived from ascetic times, when celibacy was common and when the Church had ascetic views which long ceased to prevail, and that all these doctrines come from that as a matter of fact?—No; I should have thought that Christianity from the very beginning, side by side with the stress it laid on the value of the ascetic life, bound up its highest interests with family life, and that it was this principle which lay quite at the heart of its consecration of family life.

21,679. You do not think those views about celibacy and ascetic life had any bearing or tendency in the direction of the construction such as is placed upon the Testament?—No, I should feel quite sure of that. I am not aware that anyone has ever urged that. I should have thought that as far as asceticism was concerned—

21,680. I do not know whether you have read Mr. Howard's book, because one finds it very much developed in that?—No, I am afraid I have not.

21,681. It is the latest book on the subject, I think, published in 1904?—No, I am afraid I have not.

21,682. I should like to put to you a little further this view, because your view is quite contrary to what I find throughout the Debates in 1857. Would you allow me to read the extracts from three speeches. The first is the Archbishop of Canterbury for the time: "No one, he thought, could deny that according to the general tenor of that law"—that is the Divine law—"marriage once contracted was designed to be indissoluble saving for one cause—a cause which destroyed the purpose and interest of marriage—saving for the cause of unfaithfulness. For that cause it was declared lawful for a man to put away his wife, and by parity of reasoning it would be lawful for a woman to put away her husband. . . . Thus the Bill proceeded on true principles. He would vote for the second reading, but oppose in committee the clause which permitted the guilty parties to be united in legal marriage." So I mean we had in 1857 the Archbishop of Canterbury taking a view which is quite opposite to what you have placed before us?—I should like to say two things only—first,

that I quite recognise that; I have endeavoured in a manner to explain it; and secondly, I should like very much to emphasise that that view has never been put into legislation. *

21,683. Yes, the Act of 1857 proceeded on that basis?—No, I mean the view as to the re-marriage of the innocent party only.

21,684. No, I am speaking of the question of indissolubility?—What I mean is that that view, which I think is not a true view, is a view which it is not proposed to make the basis of practical legislation—the view, namely, which allows the re-marriage of the innocent party and prohibits the re-marriage of the guilty party.

21,685. But, my Lord, excuse me: the Act of 1857 proceeded on the ground that marriage was dissoluble for the cause which the Archbishop said he recognised as the one ground?—But it allowed re-marriage for both parties.

21,686. That is true?—Therefore, what I mean is that the Archbishop—unless I am very much mistaken—would never have held that both parties were free to re-marry, but only the innocent party.

21,687. But there are two propositions in it: first, that marriage is dissoluble for one cause. That he maintains and says he will vote for the Bill. And then he said he would oppose the clauses that permit the guilty parties to be united?—Yes; therefore my view is that the view that a great many clergymen held at that time is a view which I think nobody holds now. Nobody apparently holds that you can prohibit the re-marriage of the guilty party—

21,688. Would you keep away from the guilty party first. The first point is whether the Archbishop was not supporting dissolution of marriage on the ground of adultery of one of the parties. That is the first proposition for which he voted?—Yes, I do not think anybody has ever denied it.

21,689. Then the other point is whether the guilty party should not be allowed to re-marry, which is quite inconsistent with divorce remaining so as to allow the innocent party to re-marry?—My point is that the Archbishop's position as it then was is an unworkable position.

21,690. Now, the Bishop of London was the next speaker; I think that was Tait at the time. I think he became Archbishop of Canterbury after, but I am not sure of my dates. He says: "It was, he was prepared to maintain, the universal opinion of Protestant churches that in some grave cases marriages might be dissolved; and in these cases he thought it better that the dissolution should be pronounced by such a court as was proposed by this Bill, than by private laws." And he supported the second reading. That, again, would be quite inconsistent with your view?—Well, I was fully aware of that. Of course it has been a matter of constant difference. Churchmen at every meeting on this subject have constantly called attention to these things.

21,691. I only wanted to show, by reason of these undoubted speeches, that the view of indissolubility has not been maintained except, possibly, by you and others at the present time?—But our contention would be that they were palpably and plainly going against the law of their own Church and that we have come back to it.

21,692. Their foundation was the reformers in the Cranmer times. You had not disputed that the great reformers maintained dissolubility for at least two grave causes?—I should say with Sir Lewis that there was a great deal of Reformation opinion to that effect, but that it never affected the law of the Church of England.

21,693. But it affected the law of the Church of Scotland and of many continental countries, though it did not affect England, as you say?—It did not affect the law of the Church of England. Therefore, those archbishops and bishops were speaking contrary to the law of the Church of England.

21,694. But were they not speaking in accordance with the view of the great reformers?—Some of the reformers, no doubt.

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21,695. Now, may I read "Division for the second reading, 47 for, 18 against," and those who were for it were "the Archbishop of Canterbury and the Bishops of Bangor, Bath and Wells, Carlisle, Kilmore, Llandaff, Ripon, London, St. Asaph, Winchester, that is 10 in all." Those against it were "the Bishops of Chichester, Durham, Lincoln, Oxford, Salisbury." So the point I am making is that it is not only a matter of opinion, but opinion acted upon so as to vote for a Bill which would become the law of England?—I have nothing whatever to say. I deeply deplore it, as a great number of other people have deeply deplored it who hold my view. What I should always maintain is that that was their opinion, but that it was contrary to the law of the Church of England. They never made any attempt to carry that into effect as regards the law; and, of course, they were speaking at a time when the corporate action of the Church had ceased.

21,696. Then, again, in the discussion is a further clause: "The Bishop of London objected to the statement that by the law of the Church marriage was indissoluble." Then, as to the third reading of the Bill, I see there were five for it and seven against. That is the way we get at our present law. May I just read one other passage which is very strong, and it is a passage in the Bishop of London's speech when the Bill came back to the House of Lords? He said this—after it had been through the Commons and went back to the House of Lords for some amendments—"Although he and a vast number of the clergy maintained that marriage was not indissoluble by the law of Christ—that adultery was so heinous a crime that in itself it destroyed marriage—it was quite consistent for them to wish that they should not be obliged to use all the expressions in the marriage service in the re-marriage of persons divorced for adultery." What I mean is this: if he is correct in the statement, that must have meant that he and a vast number of the clergy at that date maintained that marriage was not indissoluble by law, a position which would be entirely different to what you present to us?—Entirely.

21,697. The other point is one that is of more recent date still. My attention has been called to a letter written by the late Bishop of London, Bishop Creighton. It is in his "Life and Letters," by his widow?—Yes.

21,698. The letter is dated 1895, March 18th. It strikes me as a very valuable contribution to this discussion. Would you mind my reading it to you? He says, "The marriage question is dreadfully difficult, and would require a volume. I am sorry for the attitude recently taken up by Luckock and others." That is Canon Luckock, I think?—Yes, the late Dean of Lichfield.

21,699. "It is not founded on sound knowledge. Speaking generally, the question raises in its extremist form the problem of the actual application to life of the principles of the Gospel. We must remember—it cannot be remembered too much—that the Gospel consists of principles, not of maxims. The only possible principle concerning marriage is that it is indissoluble. But all principles are set aside by sin; and our Lord recognised that as regards marriage (the interpretation of *porveia* as prenuptial unchastity will not do. Such a man as the Bishop of Lincoln is against it on patristic grounds. It is untenable). I must own myself to a strong indisposition to set the Church against the State on such a point as the interpretation of the latitude to be assigned to the permission of dissolution which our Lord's words imply. It has always been found difficult to adjust law and equity. But is the Church on this point to admit of no equity? The mediæval system was a mass of fictions or dispensations and subterfuges. The question has always troubled the English Church. Cranmer, Andrewes, Laud alike had no fixed principles. Now the State has taken matters into its hand and marriages are primarily civil contracts. We as Christians abhor divorce. But when a divorce has been judged necessary, are we to refuse any liberty to the innocent and wronged party? It seems to me a matter for our discretion on equitable grounds in each case. I could not advise any of my

clergy to refuse to solemnise a marriage of an innocent person who genuinely desired God's blessing. "I prefer to err on the side of charity." I read that letter because it is a letter of a very well-known and very able man (we all know what an important position his was) and it is written in 1895, which is comparatively recently, and as I read it it would certainly be inconsistent, if I might venture to suggest it, with what has been put before us by yourself as the opinion entertained to-day?—Yes, he maintained a view which—I once talked to him about it—is to me almost unintelligible. There was no sense, he maintained, in talking about a Church law of marriage and that the Church had no law of itself on marriage as distinct from society. But I never quite understood his view on marriage.

21,700. (*Sir William Anson.*) To whom is that letter addressed?

(*Chairman.*) To the Rev. Canon Stocks from Peterborough on the 18th March 1895?—Of course, I should always feel about Dr. Creighton, of all men, that he did express himself with very great freedom in letters. I believe, for example, that particular view about the re-marriage of the divorced in church he abandoned.

21,701. The point is this, that he recognised practically what we have to face, that the practical view, if I may put it so without any intention of offence, which you put forward does not meet the wrongs of the innocent party. We have had hundreds and hundreds of cases now brought before us in which the innocent party is in the position in which life is intolerable and will always be so if that theory is maintained; that is the point. He seems to recognise that, and recommends a state of law that admits of redress?—I should say in deprecation of that, that I know of no proposal that is going to relieve the innocent party alone. The law as it at present exists does much more than that.

21,702. What? I do not follow?—I mean that maxim that you can allow divorce for the innocent party, and the innocent party alone, has never been found to be practicable in recent times as a basis for legislation.

21,703. Why not? I do not quite follow that. Take the case we have had so frequently put before us of a young man and young woman marrying, and shortly afterwards the man going right away to America and never being heard of again. One view will allow of that person left being able to dissolve the tie, and having life in front of her; and your view would make the bond still hold, although the other person had set up another establishment?—And the law does not confine itself to allowing a way out for the re-marriage of the innocent party, but goes further.

21,704. Well, I was not considering the guilty party at the moment. Prohibit that if you like, but why should an innocent party suffer?—Those persons that hold Creighton's view never succeeded in carrying their view into effect, that is my point. I return to the view which I maintain is shown by experience to be the only basis on which the Christian principle is maintained.

(*Sir William Anson.*) Creighton would not have allowed the marriage of the guilty party, I understand.

(*Chairman.*) I think from that letter no, but he would the innocent party.

(*Sir William Anson.*) But there would no difficulty in making that a statutory disability in the case of the guilty person.

(*Witness.*) But nobody has proposed to do that.

(*Sir William Anson.*) It was proposed in the Act of 1857.

(*Chairman.*) Yes, and rejected.

(*Witness.*) But it has never been enacted.

21,705. All I want is, your view is no matter how much wrong is done to the innocent party, the bond is to stand.—Yes, my Lord, I believe that ultimately it appears more and more certain that the Christian constitution of society at its basis rests on the principle of marriage and the indissolubility of marriage, and therefore it is one of those things for which great sacrifice is called. I quite admit that there are very hard cases but there is no way of remedying these very hard cases

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except by abandoning something which is more valuable.

21,706. But there is a very strong way of remedying them if the injured party is so injured that life has become impossible, by saying you are no longer tied. However, it is a matter for discussion. You maintain, no matter what wrong the innocent party has sustained, whether they are left for good, or whether the other party is living in adultery next door, the innocent party must sit still and suffer.—Yes.

21,707. It almost sounds, if one may venture to say so, a very extravagant thing, having regard to human nature as we find it. You would think that was the view really put forward in the Scriptures?—I have no doubt of it; I have no doubt it has been the view that has been maintained; in fact nobody could deny that it has been the view that the Christian Church as a whole has maintained; and Sir Lewis Dibdin brought out just now that there is no question at all that it is the law of the particular religious body that I belong to.

21,708. One further point. That involves, of course, a repealing of the Act of 1857. The Act was all wrong, of course?—I think so, yes. But I do not say you can repeal an Act; you cannot repeal an Act without public opinion.

21,709. No, but I mean if your view is right that would necessitate the repealing of the Act. Would you think it right to revert to the position in which private Acts of Parliament were obtained for 200 years? They seem to have been obtained because it was found that the view presented did not fit the facts of life, and Acts of Parliament were passed to meet those difficulties for 200 years?—I think, perhaps, the question is rather academic.

21,710. Suppose you at once declare, as the law was before 1857, marriage as being indissoluble by the English law, nothing would prevent people re-introducing what prevailed before 1857, and only the very rich could do that; the whole reason of that Act was that the people who were rich could go through with that and others could not. The point I venture to suggest for your consideration is that the view which is based on your presentation of this matter has been found unworkable, and relief has been got from it by those who are wealthy enough to afford it for some centuries in England, and if we were ———?—I do not think it has been found to be more unworkable than any other system. I think any system is extremely difficult to work. I do not think there is any matter that has such practical difficulties in human life. If you ask me, I do not think the Divorce Act could at this moment be repealed. I do not think there is anything like the public opinion that would enable you to repeal it. You cannot repeal it without a majority in favour of doing so. What I am anxious to maintain is what I think is the salt of the earth and the nation, and that is the Christian principle and the Christian law.

21,711. But that does necessarily from your view involve the repealing of that Act, and if that were carried out it drives you back to that time when private Acts were got through by those who could afford it, because the country felt that that view was not meeting the real exigencies of human life.

(*Sir William Anson.*) I do not understand the bishop proposes the repeal of the Act of 1857, but to bear with it as a necessary evil and to prevent its extension.

(*Chairman.*) Well, logically he does.

(*Sir William Anson.*) Logically, yes.

21,712. (*Chairman.*) I should like to ask one other thing. Has the Conference of 1888 been reconsidered in 1908 or 1906, I forget which it was?—In 1908 they re-passed those resolutions.

21,713. Was that an English Church Conference?—Anglican Communion; it was largely American.

21,714. That was reconsidered and passed again in 1908?—Yes.

(*Lord Guthrie.*) Without dissent.

21,715. (*Chairman.*) Without any dissent?—No, not without dissent.

21,716. Did any of the Anglican community in England dissent from it?—I cannot tell you who the

particular dissentients were, but this I can say, that if there was any proposal in any of the English Convocations to introduce legislation modifying our present law, it would be quite out of the question that it should be carried. Quite out of the question.

21,717. One other point, if I may ask you: Sir Lewis Dibdin referred you to the Penitentials of Theodore. I should like to get this on the note Archbishop Theodore was Archbishop of Canterbury in about 686?—Yes.

21,718. I have myself extracted them, but I have in Mr. Watkin's book the Penitentials he published while he was Archbishop, and the important paragraphs are 5, 19, 20, 21, 22, 23, and 24. I would ask the shorthand writer to write them out afterwards, but may not I take it from those that he in that Penitential, while Archbishop of Canterbury, recognised the right of divorce for adultery and desertion. Article 5 recognises the right of divorce for adultery, and Articles 19, 20, and 21 recognise it for desertion?—They were very lax. Partly it was that he got his ideas from the East.

21,719. He was of Tarsus, I understand?—Yes. I should not like to say at the moment what the precise nature of the legislation was without looking the matter up, but they were certainly lax.

21,720. But, at any rate, there was an Archbishop of Canterbury in 686 who sanctioned re-marriage in the cases I have mentioned?—Yes.

21,721. It only seemed to me so inconsistent with what Sir Lewis Dibdin was putting that I cannot appreciate the answer.

(*Mr. Brierley.*) He was also president of the Council of Hertford which voted for the indissolubility of marriage except for adultery a year or two after.

(*Sir William Anson.*) The Councils were not Code law.

21,722. (*Chairman.*) No; but I have a difficulty in understanding why they were published at all. If you have not followed it up, my Lord, I will not worry about it?—I do not think there would be any answer to that, probably, except that the moral level indicated in the Penitentials is on many points of the very lowest, and that Theodore thought that the comparative laxity of Greek discipline might be introduced with advantage into England. That, however, he failed to effect.

The following are the paragraphs of the Penitentials to which the Chairman referred:—

"5. Si ejus uxor fornicata fuerit, licet dimittere eam et aliam accipere; hoc est, si vir dimiserit uxorem suam propter fornicationem, si prima fuerit, licitem est ut aliam accipiat uxorem; illa vero, si voluerit penitere peccata sua, post V annos alium virum accipiat.

"19. Si mulier discesserit a viro suo despiciens eum, nolens revertere et reconciliari viro, post V annos cum consensu Episcopi aliam accipere licebit uxorem.

"20. Si in captivitatem per vim ducta redimi non potest, post annum alteram accipere.

"21. Item, si in captivitatem ducta fuerit, vir ejus V annos expectet; similiter autem et mulier si viro talia contingerint.

"22. Si igitur vir alteram duxerat uxorem, priorem de captivitate reversam recipiat, posteriorem dimittat; similiter autem illa, sicut superius diximus, si viro talia contingerint, faciat.

"23. Si cubus uxorem hostis abstulerit, et ipse eam iterum adipisci non potest, licet aliam accipere; melius est sic facere quam fornicationes.

"24. Si iterum post haec uxor illa venerit ad eum, non debet recipi ab eo, si aliam habet; sed illa tollat aliam virum sibi, si unum ante habuerat. Eadem sententia stat de servis transmarinis."

21,723. (*Chairman continuing.*) One other matter in Mr. Watkin's book that I want to refer to. Do you agree with the conclusion he states at page 589: "That 'all marriages contracted between Christians and non-Christians are essentially null and void'?"—No, I did not know he held it; I should very strongly demur to that.

21,724. He has made that most distinct. Then he goes on, "Marriages contracted outside Christianity are

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"not essentially indissoluble." The first paragraph says that no marriage is dissoluble?—I should demur to that.

21,725. Then the evidence you give as to the approximate dates of the texts to which Lord Guthrie more specifically referred when he asked you questions—the date of the publication or writings?—Of the Gospels.

21,726. Yes. They appear to be all written some years subsequently to the death of our Lord?—Well, there is a view held by a very eminent modern scholar, Sir William Ramsay, that "Q," which is the Quelle—the common source of St. Matthew and St. Luke—owing to the fact that it apparently contained no narrative of the passion, was written while our Lord was still alive. But it is not a view which has been embraced by many persons, I think.

21,727. If it is correct that they are written at some subsequent time, do you think it necessarily follows we have the whole of what was said, or that we have a correct statement of what was in fact said?—I believe you may say with great security that if you use them with due caution you have a correct account of what was said. I should have supposed that on this particular point you have a great convergence of security. I mean, I think St. Paul's witness, and the

witness of St. Mark, and the witness of "Q" converge in a remarkable way and give you, as it were, justification for saying that the St. Matthew account is of a subordinate nature to the others.

21,728. Do you think it is probable we have all that was said? This idea has only recently been put. The passage Lord Guthrie referred to is one in Matthew, where it ascribes the reason for the question in the words "Tempting him." One would imagine, naturally, that there would be some discussion, and I want to know, do you think the passage can be treated as recording all that was said?—No, I do not think there would be any evidence that the record is complete of all that had been said—I should say trustworthy rather than complete.

(Chairman.) I am sorry to have detained you so long, and I ought to thank you very much on behalf of the Commission for your attention and for the very great thought you have given to this matter, and for the evidence you have presented to us. I am sure we have all regarded it as of the greatest possible importance and value.

(Witness.) May I thank your Lordship for the great kindness with which you have heard what I have had to say, and I am afraid some of my observations may have been somewhat unpalatable.

Adjourned.

Winchester House, St. James's Square, London, S.W.

THIRTY-SECOND DAY.

Wednesday, 22nd June 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (Chairman).

His Grace, the LORD ARCHBISHOP OF YORK.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
Sir WILLIAM R. ANSON, Bart., M.P.
Sir LEWIS T. DIBDIN, D.C.L.

Sir GEORGE WHITE, M.P.
His Honour Judge TINDAL ATKINSON.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (Secretary.)

(Chairman.) I want to refer to a matter that I wish to have on the Notes. You remember Mr. Pickstone was called from Bury, and the President of the Association of County Court Registrars has sent to us a copy of the "Resolution passed at the annual meeting of the Association, held at the Law Society's Hall, London, on Tuesday, 3rd May 1910. It was proposed by Mr. Pickstone (Registrar of Bury), seconded by Mr. Ellett (Registrar of Cirencester), and resolved, 'That it is the opinion of this meeting that in the event of jurisdiction in divorce being extended it should be conferred on county courts.' Mr. Ellett was a member of the Committee appointed by the Lord Chancellor, who considered the question of county courts, last year and the year before, and he is the gentleman, I understand, referred to here. He has been written to and asked whether he desired to give evidence (he is a very experienced man), but he wrote to say he did not desire to come, or words to that effect; but I thought it necessary that this resolution should go on the Notes as it is from the Association of County Court Registrars, and no doubt they desire it should be before us.

Then there is rather an important letter the Secretary to the Commission has received from the Under-Secretary of State, on behalf of the Home Secretary—which I think I ought to read to you:—
"Sir,—I am directed by the Secretary of State to forward herewith, for the information of the Royal

Commission, a copy of a letter received from Mrs. — (who passes under the name of —) with regard to her husband, who is serving a sentence of 15 years' penal servitude, a list of the convictions of her husband, and a copy of the sessions papers which contain an account of the husband's trial at the Central Criminal Court. The Secretary of State also thinks that the Royal Commission may be interested in the enclosed petition from —, a convict who was sentenced to death in —, and whose sentence was commuted to penal servitude. This convict will be treated as though he had been originally sentenced to 20 years' penal servitude, i.e., he will be able to earn his release on licence after completing 15 years in prison." This is the letter signed by this woman to whose case the letter refers, addressed to the Under-Secretary of State:—"Sir,—You will please pardon the liberty I take in writing to you, but seeing in the Lloyd's newspaper that our new King His most Gracious Majesty King George has granted all prisoners time off, they are only to serve about two or three months at the most even for five years of their time of course my husband will be set at liberty, I am feeling quite ill with the thoughts of it for I know him so well that it will be his first thought to come and finish what he tried to do nearly eight years ago when he was sentenced to 15 years for trying to kill me his name — and is serving his time in Dartmoor. I have no money to

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Mrs. M. FAWCETT.

[Continued.]

" move from here where I have lived this 15 years now. I am as you will see in my other letters got another name and husband but not by the Church I only wish I could have had my peace of mind has quite gone since I read the news I never thought that he would live to come out so many good men are taken and real bad ones left. I am sure he has behaved himself so that he could be released as soon as he can for his behaviour was good always before in prison. Sir, will you tell me what can be done for I cannot go back to that life of misery. Anxiously awaiting a reply." Then the previous convictions are set out; and then there is the case on trial which we need not go into; the wife's attitude being the main question. The other is the petition: "To the Right Honourable His Majesty's Principal Secretary of State for the Home Department. The petitioner of the above-named Prisoner humbly sheweth; that the Prisoner humbly desires to ask for aid, if it can be granted him, in a matter which is of the utmost importance to him. When his case happened he had been married about five weeks. His wife remained faithful to him about three years, but then under severe pressure of poverty and trouble she was compelled, as it was said, to place herself under the protection of another man who was soliciting her about that time to come and live with him, and with whom she has been living ever since. Three children had been born to them of whom one is dead. Prisoner has tried all he could to win her back to him, but in vain. Whether he is free or in prison, that she will never return to him is the concurrent testimony of all his friends and relatives. This being

" the case he humbly desires to ask that he might be assisted while yet in prison to obtain a divorce in *forma pauperis*. He has no desire to be married again; all he wants is to be free when he is released of a tie which has for the past 11 years been null and void, and to free his wife from any apprehension she might otherwise have of his reappearance in the outside world. If he could be granted some help by the State he would be very thankful and it would help him on his release to begin life afresh without hindrance, and also enable the man with whom his wife has been living to give her and the children a name and an honest position in the world which he is anxious to do. Prisoner is ignorant whether anything can be done for him by the Government or not, but he humbly prays that if it is possible to have the relations of himself and wife fixed before he leaves prison, that a means may be found of releasing him from a tie which can never be anything to him but an empty name and of giving her a chance of uniting herself with the man who has kept her all these years and who is far more her husband than prisoner has ever been. In conclusion, prisoner desires to state that it would be a great benefit to all the parties concerned, that it is desired by them all, and that whatever inquiries are to be made, the following persons have been conversant with all the facts and will no doubt reply to any question that is put to them." Then it gives some names, and says: " Hoping that his petition will receive Your gracious consideration he is Your humble petitioner." I think it right these points should be brought before the Commission.

Mrs. MILLICENT FAWCETT called and examined.

21,729. You are so well known, Mrs. Fawcett, that I need not ask who you are, as I have to ask some witnesses; but you have been good enough to send me a memorandum of views you wish to present before the Commission, and that has been sent round; but yesterday, I think it was, you sent a slightly amended proof?—Rather longer ago, I think; I think it was Friday.

21,730. Well, I only had it, I am sorry to say, yesterday. Perhaps, therefore, you would let me examine the terms of it. It seems to me a slight expansion of the former one?—It is, and some few points are put in a different way.

21,731. If you would like to read what you say, and let us ask questions as you go, perhaps it would be the shortest way?—Of the new memorandum?

21,732. Yes, if you please?—"I do not advocate (with one exception, to be indicated presently), any addition to the occasions for divorce, for I regard the permanence of the marriage tie as of the utmost importance both for the family and for the State. I endorse the opinion of Dr. Elizabeth Blackwell when she wrote that 'The natural family group is the first essential element of a progressive society. The degeneration of that element by the degradation of either of its two essential factors, the man or the woman, begins the ruin of a State.' Nevertheless, while the permanence of marriage is aimed at by the law and social custom in all civilised countries, nearly all countries, and I believe the great majority of churches, have recognised that sufficient causes may exist to justify a marriage being brought to an end otherwise than by death. The cause most generally and properly recognised is that of unfaithfulness to the marriage vow, and I hold it to be highly injurious to the moral sense of men and a real degradation to them, to put them on a lower plane than women as regards marital fidelity. As the law of England now stands it sets up two standards, a fairly high one for women, a lower one for men, the practical effect of which is to create a condition of things which almost sanctions polygamy (or, at any rate, concubinage) for men, while maintaining monogamy for women. I urge most strongly that the difference between the sexes which now exists in divorce law should be put an end to. If this be not done, I foresee a special danger in the circumstances in which we now stand.

" There is a great social and political movement going on making for equality between the sexes. It is visible to every one, whether he sympathises with it or not. In a very large number of matters it begins to be thought that what is good enough for men is good enough for women, and *vice versa*. If in matters of morality you do not level up, you will almost certainly level down. Therefore, let no opportunity be lost of trying to level up, and bring men up to the higher standard of personal self-restraint which is the general rule among women. I notice in the theatre, in modern fiction and in some degree in social life, signs of a danger of levelling down. If the law were equalised as between men and women in the matter of divorce, it would tell in the direction of levelling up."

21,733. Your view is then to place the two sexes on an absolute equality?—It is.

21,734. And you think it would be in the interests of morality that that should be done?—Yes.

21,735. That is, raise the standard in the one case rather than lower it in the other?—I regard the present state of the law as injurious to men. I think it acts prejudicially to men to expect a lower standard of them. The law sanctions a lower standard for men, and I think that this has an injurious effect upon them.

21,736. And it tends, you think, to grade the woman down to say, "What you do I can do"?—Yes; and I do see in the various novels the tendency to that sort of thing; to think what men have been doing with legal impunity for so many years may be done now and practised by women. I refer particularly to some socialist novels that have appeared lately.

21,737. And therefore your general view is, if you alter the position by placing it in the power of a woman to sue for what a man can now will tend to raise the general standard of the men?—I do.

21,738. The next point is another one, I think?—"Although I feel that the main justification for divorce should be unfaithfulness on either side, I believe it would be right if divorce might legally follow legal separation of a permanent character, or wilful and prolonged desertion. It is obvious that separation or desertion is often followed by irregular unions, and I believe it would be for the good of society if these

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" could be legalised and made permanent. The law " should take cognisance of the fact."

21,739. Have you considered any of the other causes that have been put before us in addition to prolonged desertion?—Such as drunkenness or lunacy?

21,740. Yes?—I am not inclined to make those a reason for divorce unless they are so pronounced as to lead to permanent separation. I think in many cases the hope of reform for a drunken man or a drunken woman would be very materially lowered if a dissolution of the marriage had taken place; and with regard to some forms of lunacy which are not absolutely hopeless, the chance of recovery would be so very much diminished if the mental atmosphere of hopelessness were increased. I have some cases now in my mind in which the chances of recovery would have been enormously lowered if a dissolution of marriage had taken place.

21,741. But if you thought that a separation by either of those causes was practically permanent, it would be on the same footing as prolonged desertion?—Yes, I am inclined to think that. My feeling is that the law should follow the fact. If the fact is that the marriage is dissolved and put an end to, and there is no hope of the two coming together again, then the possibility of relief should be given.

21,742. What would you say, if you have thought of it, as to those cases where cruelty is so gross that no longer is life safe together?—Well, I do not know; I think it is very difficult. I do not know that I should like to give that man the opportunity of marrying again. I am rather assuming it is the man that is cruel and not the woman; that is a supposition. I should like it to be equal between the sexes. If a woman were brutally cruel to her husband I should like her not to have the chance of fooling another man into marrying her; and so I should with regard to the man; because if a man in that case formed an irregular union the woman could at any rate leave him.

21,743. But looked at from the position of the injured person?—Yes, I see what you mean—

21,744. You would agree there?—I should think she would have had enough of one experience.

21,745. The next is a point about the cost?—Yes. " I also desire that the cost of divorce proceedings " should be materially reduced. It cannot be right " that there should be virtually one law for the rich " and another for the poor. With great respect, I " cannot agree with some witnesses who have preceded " me, who have said that there is no demand among " the poorer classes for divorce. You may as well say " there is no demand among the poor for motor-cars " or race-horses. They cannot afford them. But I " gather from the book called 'Known to the Police,' " by Mr. T. Holmes, formerly a police-court missionary, " that he estimates since 1895, when the Summary " Jurisdiction Act came into force, that nearly 80,000 " separation orders have been issued under it, or an " average of over 6,000 a year. It is probable that " were it not for the prohibitive cost a considerable " proportion of these would have been divorce cases."

21,746. I do not know whether you noticed the evidence given before us that a very large proportion of those cases have become reconciled?—Yes, but I think that could be dealt with if what I have suggested should be carried out: that divorce should not follow rapidly after separation; time should be given, and if the husband and wife are reconciled so much the better.

21,747. But what you fear is the irregular union if it is permanent?—I think it is for the good of society that the large number of these unions that follow on separation orders should be legalised and regularised.

21,748. In what proportion have you come across those cases?—Not very largely. In some cases I have.

21,749. Then you proceed to deal with another matter—the legal position of the wife. I do not know whether that is quite within our inquiry, but we will hear what you have to say about it?—" If within the " scope of the inquiry of this Commission, I should like " to add something about what I believe to be the bad " effect produced on married life by the wholly subordi- " nate legal position of the wife. In this central institu-

" tion of human society, the relation of husband and " wife, the laws of man appear to me to be out of har- " mony with the facts of life, and at variance with the " habitual practice of average well-disposed persons. " Take the matter of the guardianship of children. " Physically, nature has ordained that the mother " bears the greater part of the burden; but notwith- " standing this, man has ordained that she should have " no legal share in parental authority or guardianship " during the lifetime of her husband. If husbands " acted as ill as the law would permit them to act, " married life would be practically a hell on earth for " most women. In the laws dealing with marriage " and the guardianship of children there should, in my " judgment, be a full recognition of the physical and " moral facts of parentage, namely, that every child has " two parents who, being jointly responsible for its exist- " ence, should also be jointly responsible for its guardian- " ship as long as it needs parental protection. Prac- " tical difficulties may no doubt arise in the event of " disagreement between the two parents, but to evade " a difficulty is not to solve it. It should not be beyond " human ingenuity to frame some means of arbitration " in such cases, the guiding principle of which should be " the welfare of the child or children concerned. The " present state of the law giving all rights of guardian- " ship to one parent and none to the other appears to " me an evil in itself, and it certainly acts injuriously " on the whole position of the wife in the family by " placing her at the mercy of a cruel or unscrupulous " husband who can enforce his will by the threat of " depriving her of all control over her children. I " believe it is the almost universal custom that in " every tolerably satisfactory marriage the joint " authority and responsibility of the two parents " are recognised and acted upon. A husband may " by law select the schools, governesses, and tutors " for his children without consultation with his wife, " but a man who did so without very grave cause " would be condemned by public opinion. As a rule, " it is the very last thing he wishes to do. He usually " desires his wife to relieve him of this responsibility, " or at any rate to share it with him. This joint " responsibility, joint guardianship, imposed as it " seems to me by God and nature, should be recog- " nised in human law. I have emphasised my con- " viction that the present law is gravely unsatisfactory " in giving no recognition to the rights of guardian- " ship of the mother in the case of the children born in " wedlock. I also feel that the law is gravely unsatis- " factory in not sufficiently recognising the responsi- " bility of the father in the case of children born out " of wedlock. At present, a man who is the father of " illegitimate children, even though he fully acknow- " ledges his paternity, cannot be made legally respon- " sible for their maintenance, except upon the suit " of the mother: if she be dead, or unable or unwill- " ing to take legal proceedings, no other person can " compel him to maintain them even though he be a " millionaire, and they become chargeable to the " parish. It cannot be doubted that these conditions " act as an encouragement to sexual laxity among " men, and are, therefore, injurious to the maintenance " of a high standard of the purity of married life."

21,750. I do not quite see why you say they tend to encourage sexual laxity amongst men?—Because the natural penalty that should follow an irregular connection the man is relieved from to a large extent. He may have a number of children; he is not responsible for their maintenance, and it would be a very considerable check on him if he were.

21,751. You mean the affiliation orders are not adequate?—Affiliation orders are not adequate; no security is taken (the sum of money is only 5s. a week) that that shall actually be paid; no sureties are taken; and after the affiliation order is granted the man moves away and neglects to pay under the order, and there is no means of following him up and insisting that he should pay. I have a case here which I brought with me taken from a newspaper a little while ago, which shows that such a payment is not a debt. There is no power on the part of the woman to recover arrears if he fails to pay and dies, leaving even a

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fairly considerable estate, as in this case. The woman who had received the affiliation order and had the sum of 5s. a week allotted to her for the maintenance of the child had proceeded against the executors for recovery of a sum which he had not paid up to the time of his death. In this case Mr. Justice Warrington said it was a perfectly hopeless application; there was no debt; and he dismissed the case. He said, "there was no debt but only a statutory obligation which ceased at the testator's death."

21,752. The ordinary case of illegitimacy without a marriage does not come before us, but your observations do evidently bear on the case of illegitimate children born to people where there has been a divorce. Would your view be then that the co-respondent in cases of that kind should be placed practically in the same position as the legitimate father?—He being the putative father.

21,753. Yes?—Yes.

21,754. And the actual father?—Legislation has been contemplated, though I do not think actually adopted, in Norway, on this very point of the responsibilities of the fathers of illegitimate children.

21,755. We have the Norwegian Code?—I had the Bill; I wrote for it, but I could not read Norwegian, and I sent it to a friend and she has not yet returned it; but I am told that though this has been brought forward it has not yet been adopted, but it very much emphasises the responsibilities of the fathers and gives the children some right of inheritance, and the right to bear the father's name; the name of the father may be registered, and the whole relation of father and children, when there has been no marriage, is placed on a different footing.

21,756. And that would be the case when the woman has had children by a guilty co-respondent and the marriage has been dissolved in consequence. You would place the liability to maintain the child—?—Upon its real father.

21,757. As if he were the ordinary legitimate father?—In all cases I would fix the responsibility on the two real parents.

21,758. Then would you kindly proceed?—"May I be allowed to endorse the evidence given to the Commission by Mr. Cecil Chapman, the metropolitan police magistrate, that the position of the wife in the family would be improved if the economic value of her work in her household were recognised by giving her a claim, either to a definite sum as wages, or to a portion of her husband's wages during his life. At present the wife of a working man with, say, five or six children may work almost incessantly from morning till night, and sometimes if there is a small infant for many hours during the night; but notwithstanding her incessant toil she may not have one single farthing in the world which is really her own. Anything she may save out of what her husband allows her for household expenses is not hers, but his. If she wants a postage stamp or a bootlace she has no money of her own to buy it. Working women have sometimes spoken to me about their unsatisfactory position in this respect. They work as hard as their husbands. Their work is as essential to the wellbeing of the family and the State, but it is taken as a matter of course and its economic value is unrecognised. The wives of working men really are among the hardest-worked people in the whole community, and a very large part of the welfare of the country depends on them. Social workers among the poor often speak of the harm that is done to home life by married women going out to work in factories for wages. I believe that the desire of the married woman to earn wages in a factory would be very materially diminished if she received from her husband some definite share of his wages corresponding to the settlement made on wives by their husbands in the wealthier classes."

21,759. What is the practical way of working that, and how does it bear on this question of divorce?—Well, I think it would elevate the position of the wife in the family and put her on a more satisfactory footing altogether. It is quite difficult for anyone who has never been in that position to realise what it

is to work hard perpetually, and yet not have one single farthing that you can use and call your own.

21,760. You think it would tend to general moral improvement?—Yes, I think it would.

21,761. That I follow; but what is the way of working it? Do you mean you would order a definite portion of his wages to be handed over to the wife every week?—I think it would have to be very carefully considered by people who have an expert knowledge of these subjects. It would be difficult, but I do not think it would be impossible.

21,762. Supposing he would not do it?—I think the English are such a law-respecting people that if she had a legal claim it would be attended to.

21,763. You do not think it might lead to more friction than it does; because you hear so constantly of a working man handing over the bulk of his wages every week if they are getting on all right?—I also heard when the Reserves were called out for the South African War and the employer undertook to give a certain proportion of the wages to the wife during her husband's absence that the wife was perfectly amazed to know what her husband's earnings really were.

21,764. Can you formulate a practical section to lay down what ought to be definitely done? I follow the point, but the difficulty is in the practical working of it?—I am not prepared to say off-hand in what way it should be done, but I think some scheme ought to be formulated by people who have the necessary knowledge and grasp of the situation.

12,765. The last point you deal with is about publication of divorce proceedings in the newspapers?

—Yes. "With regard to the question of the publication of divorce proceedings in the newspapers, I very much shrink from the abandonment of the open trial on which so much that is valuable in the administration of justice depends. The great majority of newspapers in this country already observe a proper degree of reticence in reporting such cases, and I believe if power were given to proceed against such newspapers as published nauseous details, for contempt of court, one or two prosecutions would probably have the effect of putting an end to what I understand is an acknowledged evil."

21,766. Supposing the details could not be treated as indecent so as to bring them within the power of a prosecution and yet were not to the advantage of the country and were deleterious. What do you say then? Your last suggestion would not meet that?—I think it can really only be met fully by improving the tone of public opinion. If a newspaper felt it damaged itself by publishing such details it would refrain from publishing them.

21,767. You see we have had a mass of evidence from all quarters of the country as to the absolutely bad effect produced on young people, especially by reading the reports of these cases; not necessarily indecent accounts?—But in many cases it is so difficult. Now take all the facts that have been lately brought out in public in connection with what has been called the White Slave Trade. Many of the facts that have to be laid before the public are of a most offensive and terrible nature, but their publication is necessary to rouse public opinion, so as to get effective legislation passed on the subject.

21,768. But those are facts necessary possibly in order to produce legislation: but one is considering the case where there is nothing necessary except the separation or divorce of two people?—In my opinion it is a choice between two evils, and I am rather afraid that if you shut out the power of newspapers (I mean the possibility of publicity) that the risk of evil would be greater than what you already run. I quite acknowledge the evil; I do not minimise it for a moment; but it is a choice really between two evils.

(Chairman.) I think that is all that is in your proof, Mrs. Fawcett.

21,769. (Mr. Burt.) Just one or two questions Mrs. Fawcett. With regard to the equality of the sexes, I understand you would make adultery on the

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part of the husband a ground of divorce for the wife?
—I would.

21,770. The same as it now is on the other side?
—Yes.

21,771. It has been suggested that there is a difference between the adulterous husband and the adulterous wife in this respect, that the wife's adultery brings confusion and uncertainty into family life. Do you think there is anything in that with regard to the wife that does not also apply to the adulterous husband?—No. Of course I am familiar with that point of view, but I do not share it at all. It is a joint action between a man and a woman, and I think to punish one much more severely than the other is contrary to the natural feeling of justice. It must also be recognised that if adultery is committed with a married woman, this man brings confusion into some one else's family.

21,772. With regard to the cost of divorce. It has been said by a good many witnesses that under the existing system the cost is really prohibitive as far as the poor and working people are concerned?—Yes.

21,773. And you agree with that?—I should agree with that entirely. How can working people produce 60*l.* or 70*l.*, which is the very lowest cost, is it not, of divorce proceedings?

21,774. I do not know whether you have considered the suggestions that have been made to the Commission in the way of limiting or diminishing that cost, by giving county courts jurisdiction in divorce cases?—I have not ventured on a recommendation of my own as to how it should be done. I thought it was more a question for legal experts. But that the cost should be reduced for poor people I have very little doubt whatever.

21,775. But you do agree that it is desirable, assuming that divorce is a necessity in certain cases, that the poor should have, as far as possible, facilities?—Yes, I do. Of course one says, and always thinks and believes, that the difference between the rich and the poor should be minimised as much as possible. The poor man must always be at a certain disadvantage. It cannot be as easy for him to produce 10*l.* as for a rich man to produce 1,000*l.* Still, you minimise it to a certain extent if you reduce the cost of divorce proceedings.

21,776. I am not sure whether I gathered exactly what your view is as to permanent insanity, or what appears to be incurable insanity; whether you would consider that that would be a ground for divorce. I do not know whether you have an opinion on that?—I do not know whether doctors would agree as to what absolutely was incurable. As long as there was any chance of a cure, I think the knowledge that the marriage had been dissolved would operate in the direction of preventing a cure taking place; insanity, of course, being a mental condition, the anguish and dread of a dissolution of the marriage would tend to reduce the chance of recovery.

21,777. Would you apply that also to the case of long terms of penal servitude?—Yes, I think I should be inclined to do so, too.

21,778. (*The Archbishop of York.*) With regard to the question you have just answered to Mr. Burt, Mrs. Fawcett, about the inequalities of the rich and poor. I gather you would not wish the matrimonial causes of the poor to be treated with less care and thought, and value of experience, than the matrimonial causes of the rich?—I suppose that would be very much a matter of chance as to who the judges were who heard the causes.

21,779. Precisely. You would wish that the matrimonial troubles of the poor should be, as far as possible, considered and decided by the highest tribunal that could be brought within reach of the poor?—Well, not necessarily, I think. I do not know that the highest tribunal has always been presided over by persons who have a very high level of opinion and thought on these matters. It might be that a magistrate or a county court judge might have quite as high a standard as a President of the Divorce Court. In some cases, of course, there have been presidents of the Divorce Court

whom we all have the greatest possible respect for. In others they have not had a very high reputation.

21,780. Pursuing that line of inquiry, those who have had long experience of this very difficult class of work have more knowledge of the difficulties and points that have to be watched?—Again, your Grace, I think I may remind you that sometimes a judge is put in the position of President of the Divorce Court who has had no experience whatever of that sort of business. An appointment of this sort was made the other day.

21,781. Do I gather from you that you are of deliberate opinion that, say, a police court would be a sufficient tribunal to discuss whether or not the marriage contract should be broken?—No; in reply to Mr. Burt's question I said I did not venture to offer an opinion as to what court should be available for the poor, but that there should be some court available for them that would not cost them so much I have no doubt.

21,782. All I mean is you would naturally wish that, whatever the court was, it should be a court of the highest possible character and competence?—Well, I wish that for everybody, but everybody does not get it.

21,783. You said, with regard to the inequality of the sexes, that that inequality should be redressed and the sexes be put on the same basis. Do you think that in this matter we ought to have some consideration (not always given) for the women with whom lax husbands enter into these frequent connections?—I am afraid I do not quite follow.

21,784. You are speaking of the effect of the present law on public morality. Would you say amongst those who are affected by the present law, and its effect on public morality, are the women with whom men enter into these relations without any thought of the consequences?—I think it acts injuriously on both the man and the woman.

21,785. I mean you would say, would you not, that it was very bad to do anything to encourage the existence of a large class of women with whom the husbands of other women can get into connection without any fear of consequences?—Yes, by removing what, I may call, more or less, the penal consequences to the man; you lower his moral tone, and so encourage him in laxity, which is prejudicial to society.

21,786. And helps to maintain women who are really dead to all public morals?—Condemned to a life of degradation.

21,787. Do you think the levelling up of the standard by law, as you say, might have the effect of materially reducing the number of these unfortunate women?—I think any alteration of the law in that direction would help, and it would gradually tend to make a better state of things possible.

21,788. I think you said you regarded the law as having an important effect on the standard of public morality—that the law has great influence on that standard?—I think that at the present moment the average public morality is really greatly in advance of the law. If the law moved on so as to be consistent with the facts of life of the ordinary well-behaved person, I think the law would be very much better, than it is now.

21,789. If the law was altered in your direction, it would have that improving effect on public morality?—I think so. The whole tone of society has altered and on the whole improved, and the law to a large extent has remained stationary. It is inevitable; you cannot have the laws changed every year, but when a great material improvement has taken place, then I think the law must be altered to correspond with the improvement that has taken place.

21,790. You would agree that the law by sanctioning certain things has a great influence, either for good or evil, on public morality itself?—I do, yes.

21,791. How far would you carry that out with regard to the permission the law now gives to guilty parties in a divorce suit to re-marry. Might it not be said that there the law was practically covering up and making respectable the immorality of two persons who had openly and shamefully violated the marriage obligation?—But I think the law is framed to protect as far as possible the permanence and sanctity of

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marriage; but when that permanence and sanctity has as a matter of fact been destroyed and broken by the error, or crime if you like, of either of the parties to it, then I think the law must follow the fact. This misfortune having taken place, the sacredness of marriage having been violated, I think the best thing under the circumstances is to give those people a chance of decent life again and to allow them to re-marry.

21,792. But might not it be said that the effect of that was practically to make the law give apparent permanence and sanctity, and whatever legal sanction there can be given to a marriage, to a union which was bad in its origin and must always be tainted with immorality?—I should not take that view of it. We human creatures are often doing things that are wrong, and if you have the opportunity of setting a man, whether he be a thief or an adulterer, or whatever it may be, in the way of leading a fairly decent life again, I do not think we ought to have the law in such a state that we cannot give him that chance.

21,793. Of course the point is that under the present law no punishment whatever by law is meted out to persons who egregiously break the marriage tie?—No.

21,794. Do you think that is a way in which the law encourages public morality, or even reflects the moral standard of the people?—I believe it was only last year that a law was passed punishing incest as such. I think with regard to sexual matters the law requires a great deal of amendment.

21,795. But do you think this is a matter in which the law might be amended to reflect and promote the moral standard; that the law should prohibit permanently or for a time the guilty persons marrying?—No, I would not prohibit the re-marriage; I think very often the re-marriage of the person is the best chance of recovering the ill that has already taken place.

21,796. You still think it is quite satisfactory that the law should not only not punish, but even cover up with the union of respectability —?—I am quite willing to be guided by those who know better than I do as to whether there should be a punishment for marital offences—imprisonment or anything of the kind. I do not know if that is practicable; I have not thought much about it; but I think the best chance, after the sanctity of the marriage tie has been destroyed by the unfaithfulness of a party to it, for the recovery of those persons to not only respectability but a really decent life, is to allow re-marriage.

21,797. Do not you think another way that the present law operates disadvantageously to public morality is that it enables a man to approach a woman and say, "Let us commit sin, and after the inevitable consequence of divorce I will put it right, and we shall be married and live happily." If a man were not able to say that do not you think that it would prevent many women either falling into temptation or making temptation?—I do not know that I am qualified to express an opinion as to the mixed motives that operate in cases of that kind. Of course people are more hurried away by passion, I think, than deliberately and with forethought acting in such a way as you describe.

21,798. But do not these wrong relationships very often result from the continuance of intercourse for a long time of a half guilty kind, and if the law made it plain that these persons could not marry one another at all, or for a considerable time, it would prevent that sort of intercourse becoming criminal?—It might or might not; it is very difficult to say.

21,799. Let me turn to another point. I think you said that you yourself were not in favour of adding to any of the present legal grounds for divorce, except in the case of wilful desertion, or —?—Permanent separation or wilful desertion.

21,800. When you speak of permanent separation do you mean separation which is in some manner necessary for the life or health of the parties?—No, I do not. I mean a separation that has taken place, and is a legal separation, and has continued for a definite length of time. I did not indicate what length of

time, but I should imagine a period of three or four years, or something like that.

21,801. Then you would not be prepared, do I understand, to make a ground of divorce separation which was necessary perhaps, but which could not be attributed to the fault of either party—such as insanity?—No, I do not think that insanity, unless it is absolutely incurable, should be treated as a ground for divorce.

21,802. Then would you say that the maxim that the law should follow the fact merely should apply to the cases of prolonged penal servitude where there is the fact of separation?—Yes, except in cases of penal servitude for life; but I was rather impressed by what previous witnesses have said—I believe judges and magistrates—who said they would hesitate to give the due punishment to a man if, in addition to that punishment, were added the dissolution of his marriage.

21,803. I only wanted to know what your point was. But would not you say that the law was bound to take some knowledge of the cause of the fact of separation as well as the mere fact itself?—I do not know; I think if the marriage is practically dissolved, and has practically come to an end, the law should take cognizance of that fact.

21,804. Might not that enable persons to practically agree to put a marriage to an end, and say, "The fact is here; the law must follow"?—I know cases of that kind where persons have absolutely separated, and there is no chance of rejoining, and they have lived apart for years and years; and I do not think there would be any risk in such circumstances in allowing those persons to re-marry.

21,805. I was interested in what you said about cases of extreme cruelty, that you thought there the aggrieved party might obtain a divorce, but the guilty party should not be allowed to re-marry?—Yes.

21,806. Why do you make an exception in this case? Why do you ask that the law should not allow re-marriage in this case, and not ask it in the case of an even more complete rupture of the marriage tie, such as adultery?—Because I do not wish the man or the woman who is brutally cruel to have the power of inflicting that misery again on somebody who was legally bound to them.

21,807. But a man who was cruel to the wife of a trying temper might be kind to a wife of another temper. Might not it be said that he should have a chance to live properly again?—No, I would not give a brutally cruel husband the chance of having a human being at his mercy again.

21,808. You think he is more guilty than the wilfully adulterous?—Yes, I do.

21,809. With regard to your point—with which I heartily sympathise—as to the inadequate recognition of the hard work of the wife, or the industrial work of the wife. Would you advocate a larger sum being given under maintenance or separation orders to the wife than appears to be usual at present?—I do not quite know what the law is about that now. Is it not that if there is a separation order, a maintenance allowance is given to the wife in proportion to the husband's means?

(Chairman.) Not in proportion. His means have to be considered.

(Sir Lewis Dibdin.) A discretionary allowance.

21,810. (The Archbishop of York.) You would argue that the discretion of the magistrate should have a higher regard than it has had hitherto perhaps to the amount of work that this working woman has to do in order to keep her house respectable?—In some cases the allowance made by working men to their wives for household expenses is very very inadequate.

21,811. I do not think your interesting suggestion about working husbands being compelled to give a larger proportion of their wages to their wives comes before us, but might not there be a tendency, if what you suggest is ever carried out, of the husband regarding what he was legally entitled to give—legally bound to give his wife—as simply a maximum and that he would be the more jealous to keep what was left for himself?—That is a psychological question that I cannot reply to.

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[Continued.]

21,812. Might not the effect of this very definite relationship of financial contract between husband and wife come within our consideration as a very frequent additional cause of trouble between men and women?—It is a cause of trouble now where a wife feels herself so helpless from the pecuniary and economic point of view. The woman that does her work really honestly and well and works, as I am sure your Grace knows, hard from morning to night, and yet has not a farthing—they go out to work not infrequently to relieve themselves of that condition.

21,813. I am afraid it hardly comes before us, but it is an interesting point. One last question about publication. You said the great majority of papers were good on these matters; but does it follow that those are the papers that have the largest possible circulation?—No, but I think if the ill-conducted papers could be proceeded against for contempt of court, one or two prosecutions would bring them into line with the well-conducted papers.

21,814. Do not you think a good many of them, relying on the desire of persons to read that kind of thing, would risk that as they have done in other matters?—Then they would be proceeded against again and again. I think you could check that.

21,815. But is not the history of prosecution for indecency in literature an exceedingly disappointing one for those interested in public morality? Has it not been found very difficult to procure convictions?—I think Mr. Coote, of the Vigilance Association, would be a good witness on that point. The Association have conducted prosecutions against certain papers.

21,816. I think he would rather be disposed to think it would increase the difficulty to take prosecutions of that kind?—Well, I have a great opinion of Mr. Coote's work. I think he is a splendid worker in that field.

21,817. You said, I think, the remedy might be to improve the public tone, but might not it be said: While we are trying to improve the public tone, that very tone is being corrupted by these publications?—I think those that have the power of influencing public opinion on such questions should exercise that power more freely than they do at present. Now, that trial that took place in America some years ago—the Thaw case—was reported at most undesirable length and detail in many papers of high standing, and in my opinion quite unnecessarily. We had no responsibility. The whole of those offences were committed by people not English; it was mere sensationalism on the part of the papers. I think if there were somebody of high position whose word would have been taken notice of by the public who could have protested against that, it would have had a very useful effect.

21,818. The difficulty is those who are continually trying to raise the public opinion on sexual matters are continually frustrated by the pollution of the public mind (specially of the young) by these publications; and my question is whether there is much chance of remedying public opinion while public opinion is meanwhile being poisoned?—Yes, but I feel that on the whole, if you look back on literature, for instance, at the beginning of last century or the end of the 18th century, and compare it with the literature of to-day, there has been an enormous improvement in the tone of public opinion with regard to sexual matters. Those who are engaged in combating these evils have the failures and catastrophes brought to their notice; they do not see or note sufficiently the great improvement which has taken place. I think you are inclined to take a too depressing view as to the actual state of things. I say there is an enormously good tone among the best of the working classes.

21,819. But the evidence of the condition of affairs amongst even children in the elementary schools in our great cities is exceedingly grave?—Yes.

21,820. And when we are educating as never before a large number of children to read, are not we the more bound to see that what they cannot help reading is free from corrupting influence?—I have reason to know that the people who are responsible for the education in the elementary schools are very well aware

of that danger, and are constantly endeavouring to arrive at some means to cope with it by giving the children instruction and bringing about a better state of things with regard to it.

21,821. But that is the point: is not their effort in that respect necessarily hindered by the fact that these children as soon as they go home can pick up a halfpenny or a Sunday newspaper and glut themselves with these disgusting details?—Yes, it is a very difficult question. I felt as I replied to Lord Gorell that it is a choice between two evils. Is it a good thing to have the administration of justice carried on in practically a closed court with closed doors?

21,822. That is my last point, but would not it meet with your desire, to secure the openness and publicity of justice, that the names of the parties should be published, with possibly the judge's judgment. That would be all the publicity that is necessary without these prurient details. Would not that meet your desire?—I cannot say it would. I think there is a danger and a difficulty in shutting out the possibility of the action of public opinion on what takes place in those courts.

21,823. (*Lady Frances Balfour*.) Have you got any view, Mrs. Fawcett, as to how the difference was made in the law between the position of a man and a woman who is unfaithful?—At the time of the passing of the Act in 1857?

21,824. Yes?—Well, I always imagined it was that the people who passed it thought that a very large proportion of men would be subject to divorce proceedings if adultery on the part of the husband were sufficient to invalidate marriage.

21,825. Or do you think it was based on any scriptural, or Old Testament point of view?—I think not.

21,826. You think it was made by men in their own interests?—In what they supposed to be their own interests, and what I hold to be very detrimental to them.

21,827. I do not know whether you have had time this morning to look through at all the theological and ecclesiastical witnesses we had before us yesterday. Do you agree with the Church of England's point of view as to the scriptural point of view?—Of the absolute indissolubility of marriage?

21,828. Yes?—No, I do not.

21,829. And of course it is based upon the scriptural account of adultery in the New Testament. Do you think their view is right as based on that point of view. I mean, do you so read the Scriptures as to this indissolubility of marriage?—I did glance over it, and I saw various chapters referred to it, and I thought when I had time I should look up the actual passages; but I did not follow it sufficiently to know without looking it up.

21,830. Would you give divorce for malicious desertion?—If it were of a permanent character.

21,831. Yes, malicious as it is in Scotland?—Is that the case in Scotland?

21,832. In Scotland it is given for desertion for a certain number of years?—Is the time three or five years?

21,833. Four years. And you are quite distinct that you would like to see the law altered in making it absolutely equal?—Absolutely.

21,834. It was suggested by a witness yesterday (the witness was arguing that divorce should not be allowed at all) that making it more difficult for women to get it made the Act less workable, and therefore less frequently used; but that hardly seems according to the ordinary sense of justice?—My view is that the law, as a rule, should follow the fact where the marriage has been destroyed.

21,835. But it is not just to make it more difficult for a woman to get it because it is a bad law?—No.

21,836. It is the old thing of protecting a woman against her own sense of justice?—Yes. I do not admit it is a bad law, I think it necessary to have a divorce law.

21,837. (*Sir Lewis Dibdin*.) I gather you have not come here to discuss theology with us at all, have you?—No, I am not capable of it, I am afraid.

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21,838. With regard to the question of the newspapers. You have given your view quite clearly on the question of the balance of evils, and your view is that the balance is on the side of publicity on account of the danger of proceedings being covered up and not accessible to public opinion. I quite follow that. But do not you realise that this question of wholesale publication in newspapers all over the country, the newspaper itself choosing what part of the case and evidence it will publish or not, is altogether a new thing?—Is it?

21,839. Well, I think you will agree it is common knowledge that there has been an enormous growth of newspapers, say in the last 50 years, and say 100 years ago there could not have been anything like the means for school children, for instance, to read details in the papers that there is now?—Do I gather your opinion is that the tone of the newspapers has been lowered?

21,840. No, the number of them has been increased?—Yes.

21,841. I suggest to you the position of things now is entirely different to what it was years ago: first, because the newspapers did not exist; and second, because the people could not read them in old days as they can now. That is so, is it not?—Yes.

21,842. Carrying our knowledge back to what happened in former days it was not then considered, was it, that proceedings in the courts were too much a hole-and-corner affair, and not open to public opinion, because everybody in the country could not read reports of what happened. I do not know whether you will agree with me, but I do not think that opinion held at all in the former generation, did it?—Would you mind putting it again?

21,843. I am trying to compare the past day and now. You feel as we all do the great evil of the wholesale and indiscriminate publication of disgusting details of divorce trials?—Yes.

21,844. And then you put, if I may say so—with great force, the danger of seeking to carry on law courts in private without access to public opinion?—Yes.

21,845. I want to put to you whether that is really a sound objection on this particular point when you think of what went on in former generations, when it was always the glory of England that our courts were open to the public, and everything was done above-board. But as far as the actual people were concerned, there was not a newspaper, and if there was, people could not read it?—My view is that this evil, which we all acknowledge, could be dealt with by proceeding against those papers if additional power were given in the proper quarter.

21,846. That is a matter probably of which you have no actual experience?—No.

21,847. And you do not realise perhaps what those of us who are lawyers do realise—the practical difficulty of law proceedings for that purpose?—I know something of newspaper editors, and I know as a general rule they do not court legal proceedings.

21,848. No, but I think you will remember in the comparatively few cases in which in our times there have been prosecutions for indecent literature they have not been generally successful?—Have they not?

21,849. Well, I think those of us who have any experience in it agree that there is very great difficulty in the successful prosecution of newspapers for indecency under the present law. Take that as an axiom. So you are up against that difficulty. If that is insuperable, do not you think then the wisest course would be—quite realising that there is something to be said on the other side—to control the publication of reports in those cases altogether?—I should like to try the effect of what I have suggested first.

21,850. But, practically, we have been trying it for probably many hundred years?—Is there power now in the present state of the law to proceed against a paper for contempt of court for publishing unnecessary details?

(Chairman.) No, not if you use the word “unnecessary.” “Indecent,” yes, and Sir Lewis is pointing out the question of indecency.

21,851. (Sir Lewis Dibdin.) I think everybody will agree that on paper there is ample punishment for

indecency when you get a conviction, but there is a great difficulty in getting a conviction. The limit between what is actually undesirable and what is penally indecent is hard to draw?—Yes.

21,852. Well, realising that difficulty and that it is a practically insuperable one, would it not be wiser to limit the power of newspapers to publish these details altogether; in other words, make law, what is now the practice of all decent newspapers?—Yes, I see your point, sir, but I should be inclined to think that if the law could be strengthened as to the control it might have over improper publication, that that would be the better way of proceeding.

21,853. Now I pass to another point altogether. I did not quite understand what you were referring to when you said that the tone of society was at the present time in advance of the law with reference to the subject we are concerned with. Was it that the tone of society regarded woman in her rights in a higher light than the law? Is that what was in your mind?—I was thinking more particularly of the relation of the married woman to her children. Society has afforded her great control over her children while they are in need of parental control. That is not a legal power, and I think the fact that the power she generally exercises has no legal sanction places her unduly under the absolute control of what may be a cruel or unscrupulous husband.

21,854. You do not see any danger in introducing, as a matter of law, a sort of duality of control in the household?—As I said so often, I think the law should follow the fact, and God has given the two people children, and they are jointly responsible for their existence, and should be jointly trusted with the guardianship; I acknowledge difficulties; difficulties arise in every circumstance.

21,855. And in all decent households and with good-living parents, that state of things is recognised, is it not?—Yes.

21,856. Is it not best to leave it at that?—No, I should like to give the wife more legal control. I know of many cases where the wife has been put at a disadvantage by not having a legal control.

21,857. You have a great belief in law?—Yes, I have the greatest respect for law.

21,858. It is not for me to say otherwise. With regard to the principle that ought to govern divorce, I think your principle is quite clear; your principle is that anything that has put an end in fact to the bond or contract of marriage, or call it what you will, ought to be a reason for the law being able to dissolve the legal bond. Is that the principle?—Yes, if the separation or divergence between the parties may be considered permanent.

21,859. Well, the principle is that anything that has in fact put an end to the marriage bond, whether it be by separation or whether it be by infidelity, or as may be; but if the bond is, in fact, at an end, your view is that the law should be in a position to endorse the fact by giving that recognition to it?—In my evidence I said that infidelity on either side should be considered sufficient; but if the marriage had been brought to an end, as a matter of fact, either by wilful desertion or separation, then divorce should follow that separation if it was of a permanent character.

21,860. That is what I ventured to put to you in other words?—I thought your words were rather of a more sweeping description.

21,861. Perhaps they were in the sense that they covered other grounds besides infidelity, and desertion, and separation?—Yes.

21,862. But are not you driven to that? If you adopt a principle you cannot except certain elements of the principle?—I think I should like to retain what I have given in my statement, that that is the one exception I recognise as reason for divorce. I do not wish to make divorce easy or common.

21,863. That I quite recognise. I am not trying to drive you into an admission that you do not want to make, but I want to get from you what is the principle that underlies divorce. That is the real question, and I am not trying to put you in any difficulty?—The actual bringing to an end of the marriage.

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21,864. That is exactly what I thought, but take the case that you put yourself of separation: first of all, separation that is brought about by a legal sentence; if that becomes permanent, you would say that is a case where there should be divorce?—If there is penal servitude?

21,865. No, where there has been a permanent separation by order?—Yes.

21,866. Either a magistrate's order or a judicial separation by the Divorce Court?—Yes.

21,867. That is a case that you recognise as a case for divorce. Then I think you told the Archbishop of York, or another of the Commissioners, that you realised the same result must follow where there was a permanent separation, not by order, but by the act of the parties?—Yes.

21,868. For instance under an agreement—a deed of separation; where the parties have lived separate for years?—Yes.

21,869. And it is perfectly clear that all possibility of the marriage tie being renewed is gone; you think there ought to be a divorce?—Yes, I do.

21,870. Now, if you will let me say so, that is perfectly logical, but that lands you, does it not, in this, that in the end you allow divorce by mutual consent?—Yes, if the mutual antipathy is so great as to lead to permanent separation I would.

21,871. With regard to lunacy. Of course, you realise that there are very very hard cases of lunacy, where one partner has been in an asylum for years and years, and is never likely to come out again; and I think you recognise that there might be a case where divorce would be right (though very reluctantly, and in very rare cases) under those circumstances?—Yes, I think I should. Of course, it is a medical question very much how far any case of insanity is absolutely hopeless.

21,872. It is very difficult?—It is very difficult. Where it was not absolutely hopeless, I should not let divorce follow.

21,873. I follow that; and I think any doctor would tell us that we are talking in language he does not quite recognise when we talk about incurable insanity at all?—Yes, I think so too.

21,874. But there are cases where the mind is entirely gone, are there not; where the lunatic is reduced to 'hopeless idiocy, and is a mere living vegetable?—Yes.

21,875. In a case of that kind, could it be said that divorce is right there; because it is really death; it is the death of half the being?—Yes.

21,876. The husband or the wife consists of body and mind, and the mind is dead; and on a perfectly different principle divorce might be right there?—You are trying to show me what the logical conclusion of bringing an end to the marriage is?

21,877. Yes; or a much less far-reaching principle—under a much more old-fashioned principle it might be held, might it not, that it is death; it is death of so large a part of the individual, that divorce and re-marriage might be allowed, as it would be allowed in the case of a widow or widower?—Yes.

21,878. Might it not be brought under that kind of principle?—Yes, I think it might.

21,879. Now, following up what the Archbishop of York put to you (I have done now with the principle but as a matter of public policy), if you allow divorce in the case of permanent and hopeless separation, does not that as a matter of practical policy greatly favour collusion in divorce? Does not it enable people to say: "We cannot get on, we must separate"?—I should be inclined to face that.

21,880. You agree that might be so?—Yes.

21,881. I did not quite follow how you dealt with the proposal that the adulterer should be punished?—That was a suggestion, I think, of the Archbishop of York's.

21,882. Yes, it was; it was not yours; but I did not follow what your view of it was. Let me remind you that damages are possible now in the case of a co-respondent?—But only damages claimed by the injured husband in being deprived of his wife's services, or something of the kind; something very mediæval.

21,883. Yes; but would it be possible (I have no doubt everyone would be glad to see it done if it could be worked) to impose actual punishment—say imprisonment and hard labour?—I really have not taken that subject into consideration; it was not part of my evidence. I think the Archbishop of York was responsible for that.

21,884. Yes, but we are anxious to get your view of these things?—It is very much a point of what is legally possible, is it not? Of course the law would have to be altered.

21,885. Looking back to Puritan times one looks rather with dread, does not one, upon an attempt to visit a moral wrong with physical punishment?—I referred just now to the fact that only last year or the year before, for the first time there was anything in our law for the punishment of incest.

21,886. I know you want to be fair, but is that quite a fair way of putting it? Of course there was that anomaly, but you know the history of it?—It was part of the ecclesiastical law.

21,887. Until a comparatively recent date—

(Chairman.) Are not we getting into rather an argument?

21,887a. (Sir Lewis Dibdin.) I do not think we are arguing, Mr. Chairman. Well, let me put it in one sentence: up to a comparatively recent date was it not the case that the Ecclesiastical Court dealt with incest and all marital questions?—You are the authority on these questions.

(Sir Lewis Dibdin.) I am not in the witness chair, but the fact is that the Church courts dealt with that and all other matters of the kind, and when the other matters were taken away I think incest was forgotten. That I think is the real explanation.

21,888. (Judge Tindal Atkinson.) It was put to you that your evidence establishes the position that parties by mutual consent could agree to a divorce. Do you mean that where the separation by mutual consent has been brought about by circumstances that make it impossible for the parties to live together; is that what you mean by divorce by mutual consent?—I think in my evidence I said I considered it should have been a legal separation and not merely a voluntary arrangement between the husband and wife concerned.

21,889. No; but suppose the parties cannot live together, and owing to the facts of the case they want to part, they would still have to go to a court to get a divorce?—Oh, yes.

21,890. Now one question with regard to publication. It is suggested to you that the names of the parties could be given and the judgment. Does it occur to you that that would become a sort of Gazette notice only in which the public would take no interest, and therefore the powerful deterrent of the publication of the facts would be gone?—Yes, I quite share that view.

21,891. With reference to the guilty parties being married, his Grace put two or three questions. In your opinion is it better for the guilty parties to re-marry and have legitimate children instead of continuing immoral relations and having illegitimate children?—That is my view.

21,892. Does that more than over-balance the evil that there are some cases in which the man agrees with a married woman that they shall misconduct themselves for the purpose of being married after?—I think the balance of good is as you suggest, or what I gather is your suggestion, that if the parties who had been guilty together marry, that is the best thing that can, under the unhappy circumstances that have arisen, take place.

21,893. (Chairman.) Might I ask, be best for those two people, but do you think it holds out a good example for the public?—I think it is difficult, but there is an enormous difficulty in the balancing of advantages and disadvantages.

21,894. The object of the law should be, as far as it can, to check immorality?—Yes, quite so.

21,895. Would not it be a greater check on immorality, if people knew they could not re-establish themselves by marriage, though if the marriage had

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[Continued.]

taken place, as the law at present is, naturally one would say these two people should have a chance. The point I am asking you about would be rather whether or not it would be a great check on the commission of the act?—I do not feel that; I think people are carried away by a storm of passion, and, as I said in reply to His Honour Judge Atkinson, I believe the best solution of the difficulties that have arisen is to allow them to re-marry.

21,896. The best solution of the difficulty of those two persons; that is undoubtedly so, but if you are trying to arrive at a higher standard altogether, does it not assist that very much if you say to a man, "Now you can never put yourself into a right position"?—No, I do not feel that.

21,897. At any rate, you feel that is a very important point?—Yes, I do.

(Chairman.) Thank you very much for your evidence.

Dr. HAROLD SCURFIELD called and examined.

21,898. (Chairman.) Are you Medical Officer of Health for the city of Sheffield?—I am.

21,899. In that capacity have you under you a considerable staff of women inspectors?—Yes.

21,900. The head inspector and 14 assistants?—have.

21,901. They are all women inspectors?—Yes.

21,902. Is it their duty to visit a proportion of the households where births occur?—Yes, a large proportion.

21,903. About 10,000 a year?—Yes.

21,904. Is that for the purpose of advising the mothers and in order to visit the homes of children reported by the school teachers as being in a neglected condition, to see what their condition is and so on?—Yes.

21,905. Are you brought into touch through these inspectors with a large number of families?—I am.

21,906. Do you find that in a large number of cases homes are unsatisfactory and children are neglected owing to drink?—I do.

21,907. And do you also find a number of good homes in which children are well treated, where a man and woman are not married?—I do.

21,908. What is that owing to?—Owing to the fact that one or other of them has a legally married partner.

21,909. Whom it has been impossible for them to live with for various causes?—Yes.

21,910. And you mean they have taken another?—They have taken another.

21,911. And those homes have been fairly well conducted?—Those homes are as good as any other class of home in Sheffield.

21,912. The homes where there is an irregular alliance?—A great many of them.

21,913. Is it an extensive thing in your view?—It is. It all depends on what one means by extensive; there are certainly scores of families living in that way in Sheffield.

21,914. Are those cases where there had been misconduct by one spouse in the first union?—In almost every case.

21,915. Are those cases where divorce could be obtained if it was in the reach of the parties?—Many of them.

21,916. Have you heard any expression of desire for it?—Through the people? I do not quite understand what has been said by witnesses who have said there is no demand for divorce facilities amongst the poor. I do not think those witnesses have considered how that demand could be expressed. It could not be readily expressed by the people who are living in those irregular unions. They more or less shrink from publicity. They could hardly sign a petition; they could hardly march in procession. It is difficult to imagine how they could express a demand except to people visiting like those nurse inspectors visit; they would hardly express themselves to religious visitors, because a religious visitor would, I take it, consider that they were living in sin, and the mothers in those unions would not be admitted to become members of mothers' meetings. So there seems to me no means by which those people can be expected to express their desire, and when people say there is no demand for divorce facilities amongst the poor I think they ignore that fact, that there is no means that I can think of by which those people reasonably can express that demand.

21,917. Then how do you get at the notion that there is some demand?—Through what the men and

the women who are living in these irregular unions say to these women inspectors.

21,918. What is the nature of the general information you receive?—They say, "Well, if we could be married, we should be;" or the man perhaps will say, "We are not married, I and this woman, but if we could have afforded a divorce we should not be long in getting married;" and the woman has sometimes said, "I do not like living in this kind of union." I think I have quoted the words used by the man or woman in some of the instances.

21,919. Yes. I am coming to your instance after. Do you think the matter of expense should enter into the question of divorce?—I think it should not enter into it at all.

21,920. So that these poorer people should be able to get a divorce as well as others?—I think if divorce is restricted to one class it should be restricted to the poor, because I think the circumstances are so much worse for the children. If you have an impossible partner in the better class, then they pay for a nurse, at all events, to look after the children; but if you have an impossible partner in the lower class, the home is wretched and the children are brought up in bad circumstances, and the next generation suffers.

21,921. You think in their own interests it is as desirable in that class of life as in any other?—I think it is more necessary, for the sake of the nation and for the sake of stopping actual physical neglect of the children.

21,922. I think you sum it up in this way: "Owing to the prohibitive cost of divorce suits, the innocent party frequently contracts an irregular union resulting in a family of illegitimate children, who are in every respect well reared in a good home." That summarises what you have been telling us?—Yes, in many cases.

21,923. Do you think there should be any extension of the grounds of divorce to meet these difficulties that you mention?—Yes. I do not want to make divorce too easy, but I think there should be an extension.

21,924. Can you indicate to what extent?—I think unfaithfulness. I think the law should be the same for the man as for the woman, and I point out in this connection that unfaithfulness on the part of a man has a worse effect on the public health, because it leads more to the spread of syphilis and venereal diseases than unfaithfulness on the part of the woman.

21,925. That you speak of as a medical man?—Yes, owing to the fact of prostitutes.

21,926. That is to say, what has been termed accidental cases of intercourse may be far worse than continuous cases?—Yes, because I have come across cases where the man has conveyed venereal disease to his wife as a result.

21,927. That is unfaithfulness?—Yes. Then, incurable insanity. I do not wish to say how long the time should be, but I understand that lunacy experts will no doubt tell you that after a certain period cases of lunacy may be classed as incurable.

21,928. Have you had any experience yourself personally of that class of case?—No, I have none.

21,929. We shall have expert evidence?—Yes, I do not wish to say anything about that.

21,930. But you are dealing with the cases that are really hopeless?—Yes, I believe after a certain time it can be said to be hopeless, and it should be treated then as death.

21,931. Then you have some other suggestions?—Well, persistent drunkenness. I do not know how to define that; I am aware of the difficulties, but

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* persistent long-continued drunkenness, which is very poorly dealt with under our existing law. Then aggravated cruelty—

21,932. Do you mean the definition of habitual drunkenness is too tight to meet these cases?—Well, it is a difficult thing to prove. There is one case that I call to mind of one of these families; the woman is always besotted with drink—she always drinks sodden—but I do not think we were in a position to prove that she was an habitual drunkard. I think there is some difficulty as to a person not having control of their actions—some difficulty as to whether it is only when they are drunk or only in a lucid interval.

21,933. I suppose what you are driving at is drunkenness which makes life practically impossible?—Yes.

21,934. Although it does not come within the definition of habitual drunkenness?—Yes, which makes a decent home practically impossible.

21,935. Then you have others —?—“Aggravated cruelty with repeated assaults.” One comes across cases where the woman leads a dog’s life, is subject to black eyes and assaults constantly recurring, and those men do not bring home any considerable portion of their wages, so that a home worthy of the name is impossible.

21,936. Then the last?—Desertion.

21,937. Do you mean by that, immediately; or after a prolonged interval?—Well, after a certain interval. I have not formulated any idea, but one has come across cases where a man has simply deserted his wife; the husband has not seen her for two or three years. He has paid nothing. She may have had a maintenance order, but she has got nothing under it, and she contracts an irregular union in three or four years.

21,938. Can you say what is the underlying principle on which you have selected these causes?—Well, I thought they were causes that render a home worthy of the name impossible.

21,939. That is to say, the action of one of the parties, insanity, or other matters have made life impossible?—Yes.

21,940. You have mentioned that pecuniary considerations in some of these cases of lunacy and drink are peculiarly disastrous among the poor. Will you kindly tell us why?—Well, if a wife becomes an incurable lunatic, the husband amongst the working class cannot pay for a housekeeper to look after his children. He gets a woman in and he ultimately lives with her as his wife.

21,941. And take the other case where the husband becomes a lunatic?—Well, if the husband becomes a lunatic then the woman is not in a position at present to bring up the children properly, and she is not really paid the wages that will enable her to bring up the children. I mean she gets an allowance from the guardians, but it is not an allowance on which she can bring up her children; it always supposes she is going to do a certain amount of work, and so on, so it means she probably takes in a lodger. Well, she contracts an irregular union in the course of time with one of the lodgers. She takes in a lodger to make both ends meet, and the lodger is probably kind to the children and so on, and that is the result.

21,942. And then drunkenness?—Well, drunkenness; of course, that means that the children are neglected. We come across many cases where the children are allowed to go to school in a ragged verminous condition, and it generally means that they come from a home where the woman drinks. If the man drinks the woman does not get a proper amount of wages to keep the children going, and she cannot clothe them properly and they suffer physically from semi-starvation.

21,943. How would divorce remedy that?—It would enable a man to get a decent partner to look after the children, or enable a woman to get a decent partner again to be a father; it would enable a second marriage.

21,944. Is it your view that in giving these greater extensions and bringing opportunity to avail themselves of that within reach of the poor would tend to

loosen or increase the respect for the marriage tie?—I think it would increase the respect for the marriage tie. I think it would raise the standard of behaviour for the man and the woman. I mean at present the man can do what he likes, but if he has any feeling of affection for the woman that would be a deterrent (the fact that she could obtain a divorce) if he did not behave himself properly. I do not mean that they would put it on those low grounds, but I think if you extend the facilities for divorce you tend to raise the standard of behaviour of either wife or husband, father or mother.

21,945. What is this statement you have a good deal further on: “On the other hand it is the practice of a considerable number of persons whose conduct compares favourably with that of the best of the community to break the marriage tie in such circumstances and contract irregular unions.” Just explain that a little more?—At present they cannot obtain a divorce; it is outside their ken; so they take the law into their own hands and leave the legal partner, and perhaps a woman who has been in service goes back to service, and years after meets another man with whom she thinks she can live happily and forms an irregular union. It is not my experience that these people deliberately leave to live with another man. I mean, the woman leaves the man because he is impossible; she does not go off with another man directly. She goes back to her work, and years after, while her legal husband is still alive, she perhaps forms an irregular union with some man who she thinks will be a good husband to her, and who in many cases is.

21,946. Then your view is that, practically speaking, if this greater freedom were allowed, it would tend to regularise that which is now utterly irregular?—Yes.

21,947. And make the respect for the tie greater than it really is?—Make it greater, I think.

21,948. You have appended some short histories to illustrate your points?—Yes.

21,949. I think I should like to have them. Perhaps you will read them to us?—The first case is: “Mary T. married George H. when she was sixteen, and he was twenty-one. They have had eight children, six born alive. For three years they lived happily together, when the man’s father died leaving him a recipe for embrocation. The man began making the embrocation, earning money easily, and spending it in drink. He ill-treated his wife, neglected her for other women, and often left her and the children with insufficient food. They were regularly visited by the N.S.P.C.C. Inspector. In 1907 the woman obtained a separation and maintenance order. After making one payment the husband went to prison. The wife now lives with George B. and has a clean and well-kept home. George B. is a bachelor. He says that he would not be long if she were free, and if they could save up enough to set her free they would, but it is impossible, as it takes his 21s. to keep the house going.”

21,950. That is an illustration of the desire to obtain a decree if they could?—There is need for a divorce.

21,951. Is the second the same sort of thing?—Yes.

21,952. Perhaps we might have them transcribed as part of your proof. You can call attention to any particular one?—Yes. I think if they are to be printed I might have the option of altering the names and initials a little more.

21,953. You can do that when the print is sent to you so as to make them anonymous. You say at the end of Case 3, “The man with whom she lives is a forgerman, and they would get married if she were able to get a divorce.” That is another illustration?—Yes. That was the case of a second husband who was a commission agent, and drank heavily. He frequently used to assault his wife, and was unfaithful, and he contracted venereal disease and gave it to her. She is quite on friendly terms with his brother, so that the husband’s family recognise that she is in the right, and the brother in fact lives in the next street. But this woman lives quite happily with the man who is not her husband.

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21,954. I do not think we need take the details of them; we can read them afterwards?—Yes.

21,955. The point you make in each of them is that there is an expression that if they had the means they would get free?—Yes, in many cases. Case 8, for example, illustrates a wretched home through drink. The husband is a very decent man, earns about 32s. a week. He has obtained a separation order and been separated from her, taken her back again, and tried her again, and she pawns everything. When she comes back she may be right for a few weeks, and then she pawns everything in the house, and the children become neglected, and now she has just come out of an inebriates' home after being in a year, and the probability is that when she goes back to him (which she has not done yet, I think) the home will become as bad as ever again. That is a case of drunkenness that, I think, should form a reason for divorce.

21,956. It is a sort of hopeless case?—Yes. The next case is similar, where there is a drunken woman, and the children have been dealt with again and again by the school authorities, for being verminous and neglected. The man has earned 38s. a week for, perhaps, 10 years without ever missing a week, and yet his home is in a wretched state, owing to the fact that this woman drinks and pawns everything. She has, however, lately, since these notes were made, developed tuberculosis and died from it, so that these children will now be better off.

21,957. Case 10 is the case of a drunken man; the wife has gone to live with somebody else?—Yes, it illustrates the case of a good home with an irregular union, the man being a widower.

21,958. And would marry if it were possible?—Yes, that was a case of persistent drunkenness on the part of the husband and ill-usage of the wife and her children. The next, Case 11, was also a case of persistent drunkenness on the part of the husband. In that case they are still living together, and I give that as a case of a wretched home because of the persistent drunken habits of the man. He never brings more than a few shillings a week home, and the wife is reduced to making a living by picking coke and iron from a pit heap and selling it. They have lived together for 30 years, and she says she does her best for the children, and she would get a divorce if she could. In a case like that, personally, I think, if the woman had more grit or pluck she would have left the man and done as others have done. I should, personally, have admired her more for doing it, because her children have suffered as the result of this union. The children are always neglected. Case 12 is a case of persistent drunkenness and cruelty on the part of the man.

21,959. And the woman has taken up with somebody else apparently?—Yes, and she would have been able to get a divorce if it had been within her means.

21,960. Now you have a case, number 13, of incurable lunacy?—Yes. The man was a soldier; they lived together for 14 years, and the woman was left with two children. The man went into an asylum and is an incurable lunatic. The woman was given a certain amount of outdoor relief, with permission to have two lodgers, and one of the lodgers was kind to the children and bought things for them, and ultimately they lived together as husband and wife. The woman says, "I often wish we were free to marry, because I do not like our children being illegitimate, and people look down so on a woman if she lives as I am doing." Case 14 illustrates the need for aggravated cruelty being a ground. That is a case where there has been a long-continued course of ill-treatment and brutality on the part of the husband, coupled with assaults. He always earned a good wage, but the wife ultimately had to leave him. The circumstances of the cruelty are all detailed. The wife tried him several times and has been back and lived with him on promises of reform, and on the last occasion she stayed with him 10 weeks, was assaulted three times, and again became pregnant. "She then took the children to live with her mother, and obtained a separation order. The payments were not kept up, and when the last child was born Mrs. T. and her mother were in dire poverty." Now the guardians have taken the three youngest children into

cottage homes, and this woman has found a place as housekeeper, and her employer reports she is a very decent woman, and she is absolutely convinced that her husband had no cause for complaint against her at all, and that she has been more than tolerant. The next illustrates a case of desertion and probably unfaithfulness, and the injured party is living with a widower as his wife. Then case 16 illustrates an extraordinary disregard for the marriage tie. One comes across that sometimes. That is quite an extraordinary case where the wife was brutally treated by the husband and she went to live with another man and still looked after her legitimate children—went to dress them and send them off to school. It ultimately ended in the husband and those children boarding with the wife and the man she was living with. The husband who was absolutely unsatisfactory as a husband was all right as a boarder. I give that as an illustration of extraordinary disregard of the tie, because I think it wants to be faced, and when people talk about destroying the tie they must look facts in the face and see what people do with the tie.

21,961. And the other two or three cases you know are of the same kind?—Yes, where you have a disregard for the marriage tie by people who are living otherwise up to quite a good standard.

21,962. Living with other people, do you mean?—Yes, but I mean decent homes, looking after their children, and so on.

21,963. Your point seems to be this, that as a matter of fact this thing is going on to a considerable extent—that people for one of these causes are apparently in a state in which life becomes impossible together and irregular unions are formed which would not be irregular if they had the opportunity of divorce which they have expressed a wish for?—Yes.

21,964. And I see also if I may gather it from what you say, in the interest of the children you think something of this sort should be done?—Yes, because I think if either of the legal parents is "impossible" in the working class the children have a wretched time, and are apt to be neglected and to suffer physically and mentally. I have put in some additional evidence if you please. I think it has been handed round this morning.

21,965. Will you read it out please?—Well, I have been reading the evidence that has been given from time to time, and I wanted in the first place to make it clear that my evidence as originally sent in was the result of my own experience, and not the result at all or not affected at all by other evidence.

21,966. What we have already gone through therefore is entirely original, so to speak?—That is what I want to make clear, because a good deal of evidence has since been given on similar lines. Then the second point I wanted to make was that the families which I have mentioned are simply samples. There was no difficulty in getting this number of families, and I could get scores more. The third point: I have put in a table showing the percentage of illegitimate births in the country.

21,967. Is that at the end of your proof?—Yes, showing that the West Riding of Yorkshire comes in a middle position.

21,968. Where do we look for these, 46, is that the figure?—Yes, per thousand births.

21,969. Forty-six out of one thousand in 10 years?—That is the 10 years 1888 to 1897 at the top; lower down, the last decade from 1898 to 1907 shows a slight decrease, viz., to 43.

21,970. Forty-three?—Yes, you see the highest counties in England go up to the sixties, and the lowest go down to 27, but I wanted to make the point that since we began visiting the births we find there are a number of people who have contracted these irregular unions who are to all intents and purposes man and wife, who have been living together and perhaps had a large family, and have been registering the children under the father's name. Of course, that is not known to the registrar.

21,971. Do you mean the actual father or the old father's name?—No, the actual father, so that they will have been registered as legitimate. I cannot say

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how much that has been done, but that makes the amount of illegitimacy as given in the table an under-statement.

21,972. Then you said that these illustrations you give are sample ones, and you append some additional ones. When you say samples, do you mean that this indicates that this class of life has been going on to a large extent, or that you have only come across a few instances?—I mean it is going on to a large extent.

21,973. And you think it is absolutely necessary to have some reform of law?—I think so if you want to legitimise these children who are the results of decent family life, because, as I say, one of the partners has had an impossible legal married partner. I think most of the cases I have given are cases where the man or the woman has not left his wife in a hurry.

21,974. Point 4 I think you have already referred to, have you not?—Yes, I have.

21,975. About the effect of a man's guilt?—Yes, and point 5 I think I have already referred to as to how these people would be expected to voice their demand for a cheaper divorce. I have already mentioned that. I notice particularly there have been petitions put in from mothers' meetings. Well, of course, the mothers' meetings are meetings largely of the people who are, more or less, happily married, and the people who have contracted the irregular unions are not admissible—I mean as a rule are not admissible; you could hardly expect it—and therefore it would be perfectly easy for any president of a mothers' meeting to get signatures to such petitions as have been placed before the Commissioners. One could hardly imagine otherwise. The vicar's wife, say, would have very little influence if she could not get the women of her mothers' meeting to sign a petition like that, which does not personally affect any of them.

21,976. They do not come into this condition that you are dealing with?—No, not at all, because those people are left outside the mothers' meetings. Then the other point I wanted to make was "that in many cases women who are deserted or maltreated by their husbands do not apply for separation and maintenance orders because, there being no likelihood of the payment being kept up, they do not consider it worth while facing the publicity of the proceedings." As the families I have come across are visited for totally other reasons, we necessarily come across many that do not come to the court or to the ken of the police-court missionaries because they have not applied for separation orders; they have taken the law into their own hands; and if they have an "impossible" partner they leave that "impossible" partner.

21,977. And do not proceed at all?—No, because if the woman has an "impossible" man like some of these mentioned he will not keep up the payments.

21,978. And so they simply go off?—Simply go off. If they have been servants they, perhaps, go back to service.

21,979. That exhausts the additional points, I think?—I think so.

21,980. Except that we should like to have introduced into your proof the additional illustration you give of those tables?—Yes, thank you. I have one more illustrative case that has just been brought to my notice.

21,981. Well, if they are only illustrations I do not think we want them?—It was simply another illustration.

21,982. We need not amplify them if they are only illustrations. Do you work with the Guild of Help?—I am connected with it, but I am not giving evidence as from that at all.

21,983. Have you any experience outside Sheffield?—Not of the same nature.

21,984. How far are you able to tell us in any way whether Sheffield is typical of other cities?—Well, only from hearsay, and for that reason I put in the table, showing that Sheffield occupies a middle position with regard to illegitimacy—with regard to the percentage of illegitimate births among the total births; and I draw from that the conclusion that Sheffield is not exceptional.

21,915. Do you draw the conclusion that the state of things you find in Sheffield may prevail in other cities too?—I do.

21,986. Causes in operation I suppose would be much the same?—I think so.

21,987. (*Mr. Spender.*) You would say, would you not, that the proportion of the working classes which tolerate this lax view of marriage in some of your cases is a very small one?—Well, I do not think I call it a lax view of marriage. Oh, the exceptional cases? The cases showing an extraordinary disregard of the marriage tie?

21,988. Yes?—Oh, yes, quite small.

21,989. And you say that small proportion would not be affected in its moral standard by any cheapening and extension of divorce law?—No, the only thing is that when you have a number of people showing that extraordinary disregard, and you recognise that public opinion does not seem to deter them at all at present, I think you want to take that fact into consideration. That extraordinary disregard might spread; I mean that if the Divorce Court does nothing to relieve the poor people that are in great straits owing to unhappy marriage, the influence of the people who have a great disregard for the marriage tie may make itself more felt.

21,990. I quite follow that?—I think it is to be considered that it is not much advantage materially to a woman in the lower class to marry. It may be questioned whether it is an advantage materially or not. If she lives with a man as his wife, she can get rid of him at once if they are not married. As a wife she has no hold over his earnings, and there is no question of estates to be inherited. If the man is a good man he will hand over a full proportion of his wages, just the same whether he is married or not; but the only point affected is the legitimacy of the children, and I think that is a very important question.

21,991. And you would say it is an important point in the opinion of the working classes?—I think so.

21,992. There is a very definite distinction between the legitimate and the illegitimate child?—Yes, I think there is. I would like to refer to one of my illustrations. I wanted to find out if there was any woman in Sheffield, as far as one could make out, who was really deterred from marrying owing to the poor position that a woman is put into. I have given one illustration where a woman was married to a man who drank a good deal. She had several children, and instead of marrying again after he died, she lived with a man who was first of all, I think, a lodger, and who was an excellent "husband" to her. That woman told me that the reason why she had not married was because she was afraid the man might turn out like her first husband, and that she had not married on account of her children. She said that while her two sons were living in the house she would not marry. When I saw her she had four illegitimate children, and she said now she would have no objection to marrying because her two sons were over 20 and able to earn their own livings. That was a case where the woman had definitely not married on account of her legitimate children, because she had once been married to a bad husband, and was afraid if she had a second bad husband she would not be able to get rid of him, and her children might suffer. That is the only case which I have met where a woman seemed to realise definitely that she was in a better position by not marrying. You see, if the children are legitimate, and the man dies, the guardians do not provide for them satisfactorily at present, so there is no material advantage to a woman in becoming married. She puts herself in the hands of a man that she cannot get rid of if he is a bad man. She is not entitled to any portion of his wages.

21,993. She has no superior power of enforcing maintenance against a lawful husband than against another man?—Practically not. Every time a man fails to pay she has to go down and face the court.

21,994. You would not say that was valueless, or an unimportant privilege to a working woman?—I would say it is almost valueless. If a man is a bad husband, the power of enforcing a maintenance order is, in my experience, almost nil.

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21,995. There are a great number of maintenance orders in force, are there not?—They may be merely questions of incompatibility of temper.

21,996. In those homes with substantial wages—well-kept homes—do you find that the neighbours really visit and tolerate these establishments, and treat them on the same footing as the others?—I think so, if they know the circumstances. I think that must have some effect. In the case of one of the families that I visited that was living in quite a good neighbourhood, I asked the woman as to that, and she said, “Yes, everybody knows; I take in middle-class lodgers, and I make no secret of the fact that my man is not my husband,” and when I went there I saw some of the middle-class lodgers.

21,997. I suppose the test in those cases would always be that she was faithful to one man?—Yes.

21,998. There would be no toleration of promiscuity?—No, not at all. It is monogamy; they are practically married.

21,999. Do you deduce from that that the working class forms its own judgment of a hard case and condones it, and thinks it a hard case, and that it ought to be remedied by an alteration in the divorce law?—I do.

22,000. And you do not think the respectable working class, if those remedies were given, would be demoralised in their own view?—I do not.

22,001. It has been put that though it might not affect the lower part of the working class, who are uncivilised with regard to marriage, yet it would have that effect on the respectable working class who respect the marriage tie and get a solid advantage by respecting it?—No, I think it would raise the tone of family life, because you would get rid of a lot of these impossible families where one or other partner is absolutely impossible, and you would get the children, in that case, brought up decently. I think it would have a good effect on some of the families that are at present in hopeless condition, and I do not think it would have a bad effect on the others.

22,002. And you do not think there would be any difficulty in administering justice in connection with these more or less relative offences such as persistent drunkenness and aggravated assault?—I think there might be. I have not attempted to define.

22,003. And you have not thought of any jurisdiction?—I do not wish to give an opinion upon that. I think divorce should not be granted lightly, and I think the court should be efficient.

22,004. Of course, it makes a considerable difference from the point of view of administration what the causes of divorce are—whether they are easily defined or relative causes such as you suggest?—I should have thought that a local court would very rapidly get the necessary experience.

22,005. You think a local court would be likely to form a better judgment on all cases of that kind?—I think they would almost.

22,006. It is suggested that the High Court forms a kind of atmosphere and code of tradition in dealing with these cases that is important?—Well, I do not feel competent to express any opinion about the courts.

22,007. Now would you legitimise children by the marriage of parents after their birth? One or two of your instances seem to imply that it is desirable that children should be legitimised which could only be by an alteration of the present law?—I would have made a divorce possible in the first instance and that would have legitimised the children.

(Chairman.) The witness means he would let the divorce go through to begin with and then allow marriage.

(Witness.) That is what I mean; but you mean to go backwards and deal with these hard cases.

22,008. (Mr. Spender.) Yes; would you make the legitimisation of the children retrospective; would you alter the law so that a marriage of the parents should make the previously born children legitimate?—I had not thought about that; that is the law in Scotland, is it not?

(Chairman.) Yes.

(Witness.) I suppose it works there.

22,009. (Mr. Spender.) Is there any penalty for registering in the name of the father in the case of these illegitimate children?—I believe there is, but the registrar would not know.

22,010. (Sir George White.) I take it from the bulk of your cases that you give, that drunken habits are a very great factor in all these domestic difficulties?—Yes, they are.

22,011. And may I ask with regard to this; you describe how many of these illegal or immoral alliances take place in connection with the unhappy condition of married life; has it come under your observation to what extent young people have formed an alliance in their early life and have continued to live as man and wife without ever having gone through the contract of marriage? Does that form any large proportion of the number of those living in that way?—No; I have not come across many cases where people are living together for prolonged periods without being married unless there is some obstacle such as one of them having a legal partner.

22,012. Then you have the conviction that if the expenses were brought within the reach of the poorer classes and the court were accessible, that there would be a considerable demand for divorce which now does not show itself at all?—I think there would be. I think it might be some little time before the poor got into the way of thinking a divorce was a possibility for them. I mean at present it is as impossible, as one of the witnesses said, as a motor-car or marriage settlements.

22,013. Then without giving any opinion as to whether county courts or other local courts are proper to deal with these questions, in your judgment it is a *sine qua non* that access to these courts should be cheap, or in some way or other that the cost should not be a burden to the poorer classes?—Yes.

22,014. And also that they should be accessible?—I think so, yes.

22,015. That is to say it would be a bar—even if the expense were removed—in many cases if they had to come to the High Court in London?—It would, yes.

22,016. Then, with regard to persistent drunkenness; is it your opinion that the bulk of cases of persistent drunkenness are practically hopeless? I put it for this reason: if you give persistent drunkenness as a cause for divorce, probably you would admit it should be on the ground that the chance of reform is practically hopeless?—Well, I think they are fairly hopeless, many of them. I think we are in a very bad position about drunkenness in this country at present, because there is no power to send people to inebriates' homes compulsorily—not a satisfactory power, and I believe the definition of an habitual drunkard wants revising. In this country we have never satisfactorily tackled the question of dealing with inebriates' homes and compulsory detention there. I mean people only go at their own request, as it were. There are only a few circumstances in which a magistrate can send them compulsorily. They can, if they are going to punish them in some other way, give them the option as was done in one of my illustrative cases. The woman received a sentence of three months' imprisonment, and she agreed to go instead for a year to an inebriates' home, and the magistrate sent her, though she was not a drunkard according to the Act.

22,017. There are powers?—Yes, but there are many difficulties.

22,018. Yes, and the expense is one?—Yes, I think the Act says you must find a home to take them, and there are no funds.

22,019. Have you any large experience as to the effect when they have been to an inebriates' home?—No, I have not. I have only had experience of a few cases—some where they have been better, and some where they have not been better.

22,020. Would you think that a case of persistent drunkenness is more hopeless in the woman than in the man as a rule?—I should not like to give any opinion. I have had no real experience.

22,021. With regard to the tables of legitimacy; you made a statement which was a matter of some

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interest. I observe from the tables you give that rural districts are very much worse in this respect than large manufacturing towns?—Yes.

22,022. Is it not in your judgment to be accounted for to a certain extent on the grounds that you name—that they are more often registered in the name of the father than they are likely to be in the rural district, where everybody is known?—I do not know that there is much in that. I am inclined to think that the difference between the rural districts and the towns is due first of all to prostitution, and secondly to the more widespread knowledge of how to prevent conception on the part of the woman in a town. I speak from experience of women in some of the worst paid industries.

22,023. Still, if there is to any extent whatever the practice of a father registering illegitimate children in his own name, you would admit, I suppose, that that would be practically impossible in rural districts?—Yes, I would, but I do not think the practice is extensive enough to make the difference between the percentages.

22,024. Although you know of cases you do not think it occurs to a great extent?—Not to a very great extent.

22,025. Do you find that illegitimate children under the conditions which you name of these irregular partnerships are placed as children as they grow up at any personal disadvantage in the struggle of life?—No, I do not think they are.

22,026. Have you any experience of the parties who are separated by the court of summary jurisdiction as to the proportion that come back together again?—No. I understand a considerable number do, but I have not dealt with the cases from the point of view of separation orders, so that I have not gone into that at all.

22,027. (*Mr. Burt.*) Just one or two questions. I understand that your experience leads you to think that there is a considerable demand for divorce amongst the poorer class?—Yes, I think so. I think there is a considerable need for it, and also a considerable demand; a need for it in the interests of decent families, and in the interests of dealing with neglected families, and in the interests of legitimising the children of irregular unions contracted by the innocent partner in a bad marriage.

22,028. You pointed out that it is not a matter that people would be very likely to send petitions, or take public action upon, and therefore the absence of a demand is not at all conclusive as to the need or the want of need of facilities?—Quite so, that is my opinion.

22,029. And would not also the practical hopelessness, which I suppose is pretty well known, of meeting the costs in existing circumstances also act in the direction of diminishing any expression of demand?—You mean to say that the people who are the victims of bad marriages are pretty down-trodden, if they are women?

22,030. Yes?—Yes, I quite think so.

22,031. (*Chairman.*) I think Mr. Burt meant the cost being known to be prohibitive?—Oh, yes; I do not think it is considered as a possibility. It is absolutely outside the ken of the poor—the question of divorce.

22,032. (*Mr. Burt.*) You gave us a good many illustrative cases of a very interesting kind, and I think a very large proportion of these domestic infelicities and difficulties of one kind and another are due to intemperance?—Yes, that is so.

22,033. A very large proportion?—Yes, a very large proportion; I think in some cases where one partner is intemperate, the other partner becomes hopeless after a time, and becomes intemperate also.

22,034. And would not it be a fair inference that even in those cases where other causes are alleged, such as cruelty and neglect, and so on, that intemperance is also the factor in these cases?—Oh, in many cases of neglect it is, and many cases of cruelty.

22,035. I think you said, in answer to Sir George White, that you had not had any personal experience, or any information, due to observation connected with inebriates' homes?—No, not in the management of inebriates' homes, or in the seeing of results. I have

never been in a position to criticise the results, or to see anything of the results to any extent.

22,036. So that you could not testify as to the efficiency of the inebriates' homes?—No, I am not in a position to do so, but I know the difficulty in finding inebriates' homes for the poor, and getting people who ought to be sent to them sent to them. In one or two cases I have had to deal with that difficulty.

22,037. And there is no power now to send people to inebriates' homes?—Only in a very few limited cases.

22,038. It would be mainly in the cases of people who are fairly well to do, and who can pay, at any rate, a part of the expenses of sending them?—That is chiefly the state of things at present.

22,039. (*The Archbishop of York.*) Dr. Scurfield, you were speaking about the demand for divorce amongst the poor, and especially about the people who attend meetings of mothers, and the like, but do you think that all those who attend these meetings are themselves happily married?—No, I would not suggest that. I would expect, however, that most of them were married to "reasonably" good partners.

22,040. Perhaps I have more experience of this class of persons than you. I should say a very considerable number are married to drunken husbands with whom they bear with wonderful patience?—Yes; but my chief point was that the women of the irregular unions themselves would not attend the meetings, and one can imagine that if a woman had faced the trouble all the years of her life from the sense that it was her duty to do so—to put up with the man she had married, however bad he was, and however the children were neglected; that if she had gone through her life in that way she would naturally think that every other woman should do the same and that no woman was justified in leaving her husband if she herself had not done it. She says: "I have put up with his neglect, why does not this other woman put up with it; it is her duty to do so." I think it is a mistaken sense of duty; I think she would be better doing her duty if she left her lawful husband and contracted an irregular union with somebody who would look after her children properly.

22,041. That is a suggestion with rather far-reaching consequences?—Well, I have a very strong opinion as to these neglected homes, and I cannot help it because I think that it is the worst thing in our civilisation—the wretched state of the children in these neglected homes.

22,042. But you may sacrifice one condition for the sake of another if you say that husbands and wives who find it difficult to agree, or that were drunken, had better make an irregular union?—Well, I am speaking of homes I have had experience of, of absolute squalor and filth; the children in rags and covered with vermin; and those are things that occur in every big town, the west end of the big town does not know what is going on in the east end, and there are only a few people that come in contact with these homes, and we are amongst those that do, and I think it is a frightful thing that has to be dealt with. I do not want divorces to be made easy, or thrown at people, but I want this, to be recognised: neglected homes due to one of the partners being impossible, either a drunken man and negligent father and half-starved children, or a drunken mother and everything pawned, the children left verminous and in rags.

22,043. But keeping to the question of demand, are persons in matrimonial difficulties the only persons to be consulted on this question?—No, I think the question must be looked at from every point of view.

22,044. It is a large public question?—I quite realise that.

22,045. Therefore those who are citizens, the working women, are as entitled to an expression of opinion as persons who are in difficulties?—Certainly; but we do not want to have all the petitions from one side, and that is how it is with the petitions; that is my point.

22,046. But you would acknowledge on a large public question such as this the public opinion of the working classes and the poor themselves has some bearing on the matter?—If it is fairly got; but I very much mistrust any inference being drawn from the

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mere length of a petition obtained from the mothers at a mothers' meeting. It is almost putting pressure on the mothers.

22,047. That would apply equally to all petitions. The public know the value of petitions?—Well, I do not know. The mothers do not want to hurt the feelings of the president of the meeting. They have no particular reason to want the extension of facilities themselves, and I think it is very natural that the vicar's wife, if she is the president, has an influence over them. They do not want to hurt her feelings, and they do not want to appear to have any immoral tendency, if it is immoral; and I do not think it is a fair expression of opinion of the families that is got by the signing of these petitions at mothers' meetings.

22,048. Have you been present at any of the meetings where the matter has been discussed?—No; I have heard some discussion of it among workers who have to deal with mothers' meetings. I am not going on experience exactly. I mean I am simply taking human nature as it is. I did not think anybody would be likely to dispute the fact —

22,049. I think we all know the value of a petition of every sort and kind. All I want to get at now is that you do not think that the only persons who are entitled to voice a demand in this matter are the persons who are themselves in trouble?—No.

22,050. Then, with regard to this large class, as you say, who are living without any regard for the marriage tie for one reason or another. Some of that class, I suppose, would be persons who had themselves been guilty of some breach of the marriage tie and have gone off with other people?—Yes, I think that is one of the difficulties in the case of what I have described as "impossible" husbands or wives; that if you grant a divorce to an "impossible" husband or wife it is not going to be much benefit if you are simply palming them off on to somebody else. A man who has brutally ill-treated one woman and been given a divorce might proceed to ill-treat another woman who does not know his past history. I think it wants to be considered how the guilty party is to be dealt with. I think some step should be taken to see that a man like that is not made free to make life burdensome to another woman after the first one has been relieved.

22,051. My present point is that a large number of these cases are people who have been guilty of marriage irregularities?—No, the cases I have given are the victims.

22,052. No, but the large class you speak of have already paid no regard to the marriage tie?—I do not quite follow.

22,053. You do not mean to imply that your cases are the only cases of irregular unions?—No; I have usually dealt with the victims, and for every victim there must be the other partner.

22,054. But you say a large number are living without respect to the marriage tie?—Yes.

22,055. I suggest a large number of these are persons who have been guilty of offences against the marriage tie in consorting with others?—Well, from the class of home that they live in, supposing a man has brutally treated his wife and is a drunkard—I have not much experience as to whether he has passed on to some other women and formed an irregular union and set up a decent home. That, I take it, is your point?

22,056. But are not they people who have committed adultery, left their wives, and gone and put up with somebody else?—I have no doubt there would be, but those are coming under the class that have no grievance.

22,057. I am only suggesting there is that large class. And also would you admit that there are, I regret to say, a number of people who are living together by mutual consent without marriage; they may have been married before and they may not?—Yes, there are a considerable number of those.

22,058. Then would you say the majority of grievances were due to adultery on one side or the other, or to other causes such as you have mentioned—drunkenness and the like?—I should say the majority were due to drunkenness and cruelty, and perhaps

unfaithfulness—led up to by drinking and consorting with all sorts of irregular women.

22,059. So that the relief you speak of would not be very much valued if it were confined to the cause of adultery alone?—I do not think it would—no.

22,060. So that unless the Legislature were prepared to go further, and admit a very large number of other causes, the class you speak of would not be very materially benefited?—I do not think they would—not if adultery alone was dealt with.

22,061. When you came to these other cause I think you said it would be very difficult to define them strictly—such as lunacy, persistent drunkenness, and cruelty?—I do not think there would be much difficulty about lunacy.

22,062. Do you think there would be no difficulty in knowing what is curable and what is incurable lunacy?—I think if you take a safe period of years there is no difficulty; but I do not want to answer that question. I understand you will have lunacy experts before you.

22,063. Admitting, as I think you did, that it would be difficult to define drunkenness, I think you fall back on the principle that causes which would justify divorce would be those which rendered home life worthy of the name impossible?—Yes.

22,064. But why should it only be an outside matter for judges whether home-life is impossible. If that is the principle, why should not persons who find that home-life is impossible themselves say it is so and obtain relief?—But at present, of course, they do that.

22,065. But they do it without sanction. I want to get at what is in your mind as the principle behind these causes that you mention. You say that any causes should be regarded as a cause for divorce that renders home-life impossible. I am only asking if invincible antagonism of temper does not make life absolutely impossible?—I have not made any suggestions with regard to incompatibility of temper.

22,066. No, but I want to know why you have not. If these are within your principle, why not the other?—I had not considered the question of adding other things. I am afraid to one of the questions that your Grace asked with regard to unfaithfulness I may have given what was a misleading answer. I think there are many cases amongst the poor of unfaithfulness where the man would not be considered a persistent drunkard, but would occasionally, say, go on a spree and spend an undue proportion of his wages on enjoying himself as he thought.

22,067. I do not want to go to that, Dr. Scurfield, but I am only asking what your opinion is, because it is very difficult to make a great social change except on some recognisable principle, and if your only principle is that a cause that renders home-life impossible is sufficient to justify a divorce, why should not two persons come and say, "Our tempers are wholly incompatible and life is impossible, and we want a divorce"?—I have not put the thing quite as far as that. In writing I have not used any expression as —

22,068. Take one of them—drunkenness of such a kind as makes continuance of home-life impossible. Supposing a woman knows that if her husband goes on being drunk she could divorce him, is not that the removal of a great incentive on her part to try and reform him? Will not she just let him drift?—No, I should not think so, if she has any affection for him.

22,069. For instance, you admit that there might be something more done in the way of inebriates' homes than we have done yet?—I think that is so.

22,070. Well, if a woman can obtain a divorce for the mere drunkenness of her husband, she may be divorcing a man who, with a little patience and treatment, might have become a respectable man?—Yes, there is that possibility. If the country is really going to tackle the question of the treatment of inebriates, that might affect what is done under this heading, but I am dealing with things as they are at present.

(*The Archbishop of York.*) I should like to have asked some more questions on your very interesting proof, but I must go.

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22,071. (*Sir Lewis Dibdin.*) I gather by your answers to the Archbishop of York that your view as to the grounds of divorce has been a good deal formed by the different cases that have come before you, which have grouped themselves in certain sets showing the necessity of relief on particular points; is not that so?—Yes.

22,072. Rather than any great comprehensive principle governing the whole subject?—Yes, excepting the money question.

22,073. What is that?—I do not think the money question ought to enter into it.

22,074. Quite. I accept your evidence as to that, and want to ask you about it. I gather you do not think much of petitions against any increase of facilities. What is your feeling as to the evidence of police missionaries? Do not they know the class you are speaking of?—I do not think so, because they come across the people who apply for separation orders.

22,075. No, pardon me; as you know, the police court missionary is consulted by the court in a great number of cases where no separation order is asked for, and it is in those cases that the police court missionary is called in?—Are not they cases that come to the court for some reason or other?

22,076. Yes, for some reason or other, but I say that the poor are going to the stipendiary for advice in all their troubles, matrimonial and otherwise, and then the police court missionary is called in. Surely, under those circumstances, the police court missionary has a fair opportunity of finding out what is going on?—Yes. He will not, of course, come across the cases who, as I say, take the law into their own hands. The case is hopeless then; they do not expect to get any relief from the courts; and, if a woman, she goes back to service.

22,077. If a woman lives with a man who punches her head, and she goes to the magistrate —?—The irregular unions that do not get on well together?

22,078. Yes; all the irregular unions do not get on well together?—No; I do not suggest they do.

22,079. I cannot understand why you think the police court missionary has not an opportunity of ascertaining the opinion and understanding the life of the class you are speaking of?—Oh, I do not think that at all. I rather fancy, if I may say so, the women police court missionaries have given different evidence to the men.

22,080. Well, of course, we have the evidence?—Yes, I think I noticed that the views of the women are more in accordance with mine.

22,081. I notice in your case No. 11 you give the case of a poor woman with a drunken husband who treated her very badly, but she has made the best of it and has done her best to keep together a satisfactory home, as you put it; and your comment on that, I think, was that you thought she was very foolish, and ought to have left the man and formed another union. Is that really your view?—I hardly said that.

22,082. I think that is what you said?—I think if she had more grit or pluck she probably would have done. I think so. Some of these people are so down-trodden as to be almost feeble-minded. After a prolonged period of ill-treatment they become almost feeble-minded, and they have not the grit or pluck to break the tie.

22,083. Is it your view that a woman who has not lost her grit, and is normal, ought to have left the bad husband like that—to leave him and go to another man?—I am not going to say that. I say the law ought to be altered.

22,084. But until the law is altered, I thought you rather indicated that your view was she ought to do that?—No; as far as I would go is to say that one cannot blame a woman who does that. I can imagine a really good woman might do either of those things, and it is for her to decide, and I should not judge her. I do not know which is the right thing for her to do from what I call the moral point of view, because I do not look upon compliance with man-made marriage laws as being synonymous with morality, seeing that those man-made laws differ in every country in the world.

22,085. Your mind is in doubt as to what she should do. Your mind is not made up as to what you think her duty should be in those circumstances?—That is so.

22,086. Now I do not follow at all why you give us a category of cases of which I will refer you to No. 18 as a specimen. That is a case, you will remember, where a woman whose husband was unfaithful to her left him, and then formed a relation with a married man with an elderly wife, and she is living with the man in the same house with the elderly wife, and they are all living happily together. I do not see why you give us that. You told Mr. Spender, I think, that you did not suggest those were typical cases of the section of society you speak of, but that they were exceptional cases. Is that so?—That is so.

22,087. Then from what point of view are those cases given to us? Are they cases where reform of the divorce law would do any good?—No, simply to illustrate that there is amongst certain people an extraordinary disregard for the marriage tie.

22,088. Well, of course there are a great many wicked people in the world. We all know that?—But I do not mean that these people are wicked from other points of view.

22,089. Do you mean that this woman's action was right?—Not at all. Do not think I have not a respect for the marriage tie. I look upon a separation order as a breach of the marriage vow, just in the same way as a divorce; people are not carrying out the marriage vow who get separated. People of our class who get married deliberately with the idea of having no children do not carry out the marriage vow.

22,090. You are not applying your mind to the point I am asking you. I want to find out, if I can, to what that 18th case, given as a specimen of a similar class of case you give, is directed. What is the point you wish us to draw from that case; if merely that a great many people take a very loose view of morals, it is a matter, I think, we are all aware of. If it is anything else I want to know what it is?—The point I wanted to bring out was that there is, among a certain number of these people, an extraordinary disregard for the marriage tie, which I think has sprung up under the present system of people having to take the law into their own hands because the law will give them no relief, and I think that that extraordinary disregard for the marriage tie may possibly spread if the same facilities are not extended to the poor as at present the rich have.

22,091. Then is it your suggestion that the marriage law as it is more or less responsible for a disgusting case like that, because it does not allow people to get rid of their marriages more easily? Do you hold the present marriage law responsible at all for a peculiarly repulsive case like that No. 18?—No. I think, as the result of divorce being absolutely outside the ken of the poor, that an extraordinary disregard of the marriage tie may arise and may spread. That is the point.

22,092. It is more satisfactory to look at the actual case. Here is a woman whose husband is unfaithful to her. You suggest she might have got a divorce, I suppose, if the law had been simpler?—She might have—yes.

22,093. Why should her not getting a divorce render it necessary for her to create a fresh relation with a married man whose wife is elderly?—Oh, it does not.

22,094. How does it bear upon it? If she had been divorced she would have done exactly the same, would she not?—I think I have answered the question—that it shows the extraordinary disregard for the marriage tie which has sprung up under the present system of having divorce restricted to the rich, and I think one has to face that fact—that that extraordinary disregard may spread. That is simply an extreme case of the disregard. There is a good deal of ordinary disregard of the marriage tie, but that is an absolutely extreme case.

22,095. Is not that rather remote? Would you say that cases of wife murder, because homes are unhappy, must be traced to the divorce law, and if the parties had been in a better position there would have been a divorce, and consequently no murder?—Well, these people are

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not absolutely tabooed, they are not ostracised or anything—people who are living this extraordinary life.

22,096. But do you suggest that where the wife is living in the house in the circumstances you state there, that the neighbours would look on that with complacency?—I do not know at all whether they have done that; I do not know how the neighbours regard them.

22,097. One last question. Do you think that the woman in that case ought now to be able to get a divorce?—Oh, no.

22,098. Apparently she would not care about it; but do you think she ought to get one?—No, I do not think so.

Adjourned for a short time.

22,099. (*Judge Tindal Atkinson.*) Just a few questions I want to ask you. It has been suggested that if local courts had jurisdiction and facilities were given for divorce, people might be tempted to commit offences against their marriage contract in order to get divorce. Having a knowledge of the people amongst whom you mix, do you think that is probable. To make my meaning a little plainer: Supposing county courts had jurisdiction so that parties could easily go to a county court, that that might be a temptation to a person who wanted to get a divorce to commit adultery with a view to forcing the other spouse to take proceedings; so that the facility would operate as an inducement to immorality?—That state of things exists now amongst the upper classes, does it not?

22,100. But do you think that that would be so amongst the poor; that it would tempt them to immorality to get relief?—I should not have thought so. I should have thought loyalty between husband and wife is as much thought of among the poor as the wealthy; and even more so.

22,101. That would not weigh with you then with regard to giving facilities to the poor people?—No, because I do not think it would have more effect than it at present has amongst the well-to-do.

22,102. I rather gather from your evidence that you attach the greatest importance to the children being under the proper influence?—I attach very great importance to that.

22,103. And that the present state of things rather puts the children under bad and contaminating influences?—Yes, I think the children of legitimate marriages suffer very greatly in many cases at present on account of the bad conduct of one of the partners of the marriage; and I think, on the other hand, a large number of children—illegitimate children—are born from decent living people who are not married but are living together. And if it is considered a good thing for a child to be legitimate I think something should be done in their interests. I think practically everybody recognises it is better for the children to be legitimate than illegitimate, however good the union from which they spring.

22,104. For the purpose of getting the children out of a bad influence is it very important that you should have some judge readily accessible who can make orders directing the control of the children and access to them?—Yes, I think it is.

22,105. (*Mr. Brierley.*) Dr. Scurfield, in enumerating the causes which you would make grounds for divorce, I understand you to fix on the five grounds which you have given as being those which render home worthy of the name impossible?—Yes.

22,106. I think those are the words you used?—Yes, those were some of the most important.

22,107. Whether there is any principle which logically covers the whole of those causes or not, do you find it your experience that they are the causes which most frequently lead to misery in the home?—I think so; yes.

22,108. And on that ground you choose them?—Yes, that was my ground for choosing them.

22,109. I suppose the welfare of the children has had as much weight with you as the happiness of the husband and wife?—Quite so.

22,110. Take the case you suggest, for instance, of persistent drunkenness; does not it very often happen, really, that the father's duty, in the case of a very drunken wife, is to separate from the wife and take the children from her?—I think it is.

22,111. I suppose under the present state of the law you would agree that his difficulties are almost insuperable?—I think they are.

22,112. He is driven into such a condition of things that the almost necessary result, you may say, is that an alliance is formed with some other woman?—Yes; he is driven to make a breach of the marriage vow by getting a separation at present, and the result is that very frequently an irregular union follows.

22,113. If there are young children is it not necessary for him, in the interests of the children, to get someone who will look after them?—Yes; and he cannot pay, as a rule, a proper wage for a house-keeper. He, as a rule, has difficulty in affording it.

22,114. And if he can, are not the circumstances of their life such—I do not say they are compelled to enter into an immoral union with each other—but such that the almost necessary result, or the extremely probable result, is that they do?—Yes, in a great many cases.

22,115. And you would advocate that divorce should be obtainable for the man in such a case in the interests of morality?—Yes.

22,116. And in the interests of the children of the first marriage and of the probable children from the second connection?—Yes.

22,117. With regard to drunken wives; do you suggest there should be power to send them to an inebriates' home?—I think greater powers are required in that way.

22,118. I do not know how it is in Sheffield, but I suppose you know one of the great difficulties about an inebriates' home is the great cost?—Yes, at present we are very badly supplied. We had an example among these illustrative cases where there was a prosecution for neglect, and the woman would have been imprisoned, but she was given the option of an inebriates' home; and there was a difficulty in getting one to take her, and eventually she was taken by one belonging to the Salvation Army.

22,119. I suppose that was voluntary?—Yes, a voluntary one.

22,120. I suppose that one was not expensive?—Well, this is the only cheap one we could hear of that would take this woman, and the payment was 7s. 6d. a week; but that was a lot for a working-man earning 32s. to pay. He had to pay 7s. 6d. a week and bring up his four children and himself with the balance. It reduced what he had to spend on the home.

22,121. And, I suppose, if you had compulsory power to send them to inebriates' homes the question of expense would come in?—Yes.

22,122. And if the community had to bear it the community would have a good deal to say about it?—Yes.

22,123. I do not know what it is in Sheffield, but do you find the municipal authorities in the west riding object very strongly to the expense of these compulsory orders for people to be sent to inebriates' homes, as it is?—I have not really been brought into touch with that.

22,124. I did notice the Home Secretary remonstrated with some justices of the West Riding for not exercising the power they already have?—Yes, I think I saw it had become almost a dead letter in our neighbourhood.

22,125. That is because of the great expense that is found to accompany it, I suppose?—Yes.

22,126. However that is, would you suggest that there should be further compulsory power given to send to an inebriates' reformatory or home if it was found possible to exercise it?—I certainly would, and then, I think, one would be able to define what kind of persistent drunkenness would be ground for a divorce—if one had better facilities for knowing the hopelessness of the situation.

22,127. You would want a different definition?—Well, I have not tried to define persistent drunkenness

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because I found there was a difficulty. We could judge better if they were curable or incurable if we had greater powers for sending people to these homes.

22,128. (*Chairman.*) Just two or three questions that arise from your answers. With regard to the disregard which you have mentioned as being paid to the marriage tie, am I correct in thinking your view would be that if you can place the opportunity for release from an impossible tie in people's grasp you would free them and in that way raise the standard of regard for the marriage tie?—Yes, that is my view.

22,129. All irregular unions then would gradually sink down into a very low state of regard?—Yes.

22,130. Because it would be known that freedom could be obtained when it was really deserved?—Yes, when it was really necessary.

22,131. And the unions legitimised?—Yes.

22,132. You think that would be really the operation of the suggestion you make?—Yes, I think it would.

22,133. And you think it follows practically from what you have told us that separation between man and wife which lasts, and which is not converted into a final dissolution of the tie, leads to bad results?—Yes.

22,134. One other point. These instances that you have given in your very valuable proof are mainly those of victims of the present state of the law as I understand. You use the word "victims"?—Yes, mainly victims, except that there are one or two cases that show what I call an extraordinary disregard of the marriage tie. They are not necessarily victims.

22,135. They are illustrative of a disregard which you think will spread if nothing is done?—Yes, because if you have many people breaking the tie with whom the neighbours sympathise because they know they are victims, the neighbours become less discriminating and see that it is a common thing for people to live together and have children without being married. They do not go into the absolute causes when they know the thing is common owing to there being victims. They will not go into every case to see if the couple concerned are victims; they will assume that it is so.

22,136. The interests of the children bulks very largely in the suggestions of reform you make?—Very largely. I do not suppose anybody seriously holds the idea that the sins of the fathers are to be visited on the children in this connection. That is entirely against the doctrine of public health.

22,137. The doctrine operates in more ways than one; it is a detriment to the children of the marriage and to the detriment of children who may be born of an illegitimate union after?—Yes.

22,138. Then, one word only about the principle you were asked about. I gather that your view is at any rate that these great causes you have mentioned come within the principle of misconduct of one of the parties, making the marriage tie impossible?—Yes.

22,139. Whether there are any others, I do not know whether you have considered?—I have not really considered other possible causes.

22,140. It may be said that these are the active causes in operation, which are generally recognised?—Generally recognised as operating at any rate amongst the poor.

22,141. I think it was put to you whether parties might take the view of what was impossible as distinct from the court taking the view on these grounds. That does not necessarily come within your principle I take it?—I do not think it does, because the question of cruelty already has to be decided by the court—the question of what is cruelty.

22,142. Yes. The view of what the parties thought impossible might not necessarily come into the view of the community as to what was impossible?—Yes.

22,143. And the community might recognise certain grave causes such as you mention as those on which they could act?—Yes, I had not considered the matter from the point of view of mere incompatibility of temper.

22,144. That would be rather the view of the two parties and not necessarily the view that the rest of the world would take of their action?—Yes.

(*Chairman.*) I think that is all I have to ask you.

(*Sir William Anson.*) Lord Gorell, I had not an opportunity of hearing Dr. Scurfield's evidence, but I have read his proof. You will stop me if I ask any questions that have been asked.

(*Chairman.*) Certainly.

22,145. (*Sir William Anson.*) I wanted to ask about these five grounds on which you say divorce should be obtained. As to unfaithfulness on either side I entirely agree. As to incurable lunacy there is a considerable difference of medical opinion, is there not, as to the curability of lunacy?—I understand lunacy experts will give evidence, but I am under the impression that it is possible to fix a time and to say that when people have been insane such and such a period recovery is no longer possible. I believe that is a thing that can be said with certainty; I would not like to say what the time is. I leave that for lunacy experts.

22,146. Would it bring about any difference in your view—the period of married life at which the incurable lunacy developed. I mean that when the parties had lived together say, happily or peacefully, for a good many years, and one of them becomes incurably insane should you say that that was the same ground for divorce as if lunacy developed quite early in married life?—I think so, if it was incurable. I think I take the view that one of the Commissioners mentioned, that if lunacy becomes incurable the person as an individual is dead. I mean the person consists of mind and body, and, if the mind is gone, there is an end to the tie.

22,147. It would make no difference in your view of the matter that the lunacy developed quite early or in the middle or late in married life?—I do not think that should matter. I think the incurability should be the point.

22,148. You would take the lunatic as dead?—Yes, if decided to be incurable.

22,149. Then, as to persistent drunkenness. That must be a matter of opinion, must it not?—I have not attempted to define that as I recognised the difficulty; but, as I mentioned to one of the Commissioners, if the facilities for dealing with drunkards in inebriates' homes are increased it will be possible to make some sort of standard perhaps, and to say that a person who is not cured at the end of three years' detention in an inebriates' home (you might have some standard like that) might be considered as —

22,150. As a lunatic?—As a persistent drunkard, or lunatic.

22,151. Otherwise persistent drunkenness must be a matter on which each judge would have to exercise his discretion?—Yes; that would be difficult, but I recognise it has been one of the commonest causes either on the part of the husband or the wife in making the home very bad.

22,152. I suppose more so in the case of the wife than the husband?—More so in the case of the wife because if there is a good wife she does what she can to keep the home decent in spite of the husband's drunkenness, but it is impossible for the husband to do that. He has to go out to work and leave the home and she pawns everything and wrecks the home.

22,153. But it must be a matter of individual opinion and discretion to say the point at which drunkenness was so persistent as to justify a divorce?—Yes.

22,154. You would settle that by saying if the patient was not cured after a certain time in an inebriates' home —?—Yes, I think something like that.

22,155. Then the same kind of difficulty arises in the case of aggravated cruelty?—It does.

22,156. That must be a matter of opinion, must it not?—Yes. I suppose it is so at present in the Divorce Court.

22,157. Well, that is a question which only arises when it is coupled with adultery, is it not?—Yes.

22,158. But here you deal with cruelty by itself as making the home impossible?—Yes. Well, it is very often associated with drunkenness. I suppose if a man keeps on assaulting his wife, and she goes in fear of her life, and so on, she gets a separation for cruelty at present, does she not?

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22,159. Yes?—So that the court has to judge of what constitutes cruelty in a case of separation.

22,160. You mean cruelty that would be ground for separation order might be ground for divorce?—Well, you might want to have more. That would be a matter for consideration.

22,161. But that would be a matter in which you might get a variety of opinions and exercise a discretion?—Yes.

22,162. If you have a number of courts, all dealing with the same matter?—Yes.

22,163. And a different standard for the grounds of divorce?—Yes, I think that would be a difficulty that would have to be met.

22,164. That is a difficulty?—Yes.

22,165. And you cannot meet that, as you can drunkenness, by saying that a term might be a test?—In the case of drunkenness you would get the certificate of the medical man in charge of the home. I think it would be easier (if you had the requisite home) in the case of drunkenness than in the case of cruelty.

22,166. Then as to desertion. What extent of desertion?—Well, for a certain period—it would have to be defined.

22,167. There is a term in Scotch law “malicious desertion”?—Yes, I do not know what “malicious” means.

(Chairman.) It means wilful.

22,168. (Sir William Anson.) Yes, but desertion which suggests no desire to return?—Yes, well, several cases I have given illustrate that. Men simply leave their wives and never return.

22,169. What I mean is, that apart from unfaithfulness these cases would all be cases in which the judge would have to exercise a discretion?—Yes.

22,170. As to the point at which divorce should be granted; and the discretion of one judge might be different from the discretion of another judge?—Yes.

22,171. And therefore if you multiply jurisdiction you might possibly get a number of different standards under which divorce might be granted or not?—Yes.

22,172. That is a difficulty, is it not, in multiplying the grounds of divorce—when you get beyond the ground of adultery?—I should think that is not an insuperable difficulty. I have purposely abstained (because I do not feel I am capable of giving an opinion upon it) with regard to the courts, but I should think the matter of co-ordinating the actions of the various courts is not an insuperable difficulty. It might necessitate the sanction of some higher authority.

22,173. Not as to the point at which the court considers cruelty or drunkenness makes the home intolerable?—Well I should think the local court would be the best able to decide as to that; but I should have thought it would have been possible to have had sufficient guidance for these local courts to have got them to act on more or less similar lines. I do not suppose every case in the Divorce Court is decided in exactly the same way. If you went into the matter critically, you might find that it would depend on the state of health of the judge who decided the case.

22,174. I only wanted to point out that you would qualify these incurable lunatics, persistent drunkards and aggravated cruelty, and whether that qualification did not in itself create difficulties in extending the law of divorce?—I wanted to give the reasons which I found made the home impossible most commonly, and I purposely abstained from attempting definitions. I know the pitfalls that arise when one does that.

22,175. (Chairman.) May I add a question on those questions. Would it be right to consider those matters as discretionary only? The question of wilful desertion would be a matter whether he had gone, and the question of how long would be a matter of fact. Those would be two questions of fact?—Yes.

22,176. I do not for a moment see—with deference—that that is a matter of discretion. Desertion against the consent of the petitioner and the length of period would be two questions of fact?—Yes.

22,177. Now take the case of cruelty. Cruelty at present is a cause of judicial separation in the High Court without the word persistent, and it may be a

question of judicial separation without involving any question of adultery?—Yes.

22,178. I daresay you know that has been the law, whatever cruelty means there, almost ever since the foundation of English history?—Yes.

22,179. And therefore the cruelty in that way has always had to be considered?—Yes.

22,180. It has been practically considered—at least so the House of Lords has said—as such conduct as renders the life unsafe?—Yes.

22,181. Would that be what is passing through your mind?—Yes.

22,182. How long have you been in the medical profession, Dr. Scurfield?—I qualified in 1885.

22,183. How long have you been medical officer of Sheffield?—Seven years; and I was eight years in Sunderland before that.

22,184. In the same capacity?—In the same capacity; and then I was in practice before that.

22,185. That leads me to ask you: at Sunderland did you find the same state of things prevailing as you have at Sheffield?—I had not the same means of knowing; there was no woman inspector at that time in Sunderland; there have been two appointed since I left.

(Chairman.) Thank you very much; we shall all value your evidence very much.

The following are the Illustrative Cases referred to by the witness:—

Case 1.—*Illustrating need for Divorce to be made cheaper.*

Emily T. married George H. when she was 16, and he was 21. They have had eight children, six born alive. For three years they lived happily together, when the man's father died leaving him a recipe for embrocation. The man began making the embrocation, earning money easily, and spending it in drink. He ill-treated his wife, neglected her for other women, and often left her and the children with insufficient food. They were regularly visited by the N.S.P.C.C. inspector.

In 1907 the woman obtained a separation and maintenance order. After making one payment the husband went to prison. The wife now lives with Frank B., and has a clean and well-kept home. Frank B. is a bachelor. He says that he would not be long if she were free, and if they could save up enough to set her free they would, but it is impossible as it takes his 21s. to keep the house going.

Case 2.—*Illustrating need for Divorce to be made cheaper.*

M.B. lives with a man who works on the canal. M.B. has four children, two by her husband and two by the man with whom she lives.

M.B. left her husband because he drank, was unfaithful and cruel. The man with whom she lives is hard working, and brings his money home. He earns about 21s. a week.

M.B. keeps her house clean, and her children neat, and apparently the home is as comfortable as that of any married person of that class.

Case 3.—*Illustrating need for Divorce to be made cheaper.*

A.N. living with J.S. in a perfectly respectable home. It is well known to the neighbours that they are not married. They take in middle-class lodgers, and make no concealment of the fact that they are not married.

A.N. has been married twice. Her first husband was a good husband to her. The second husband is still alive, and A.N. is quite friendly with his brother.

The second husband was a commission agent, and drank heavily. He frequently assaulted his wife, was unfaithful, and contracted venereal disease during his marriage. His behaviour was the reason for A.N. leaving him. The man with whom she lives is a forgerman, and they would get married if she were able to obtain a divorce.

There is one child by each man.

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Case 4.—Illustrating need for Divorce to be made cheaper.

The husband of F.M. turned out to be drunken and unfaithful. She had been in domestic service before marriage. She left her husband on account of his behaviour, and went back to service.

She has not seen her husband for several years, and does not know whether he is alive or dead.

She now lives happily with J.D., who is an engineer's labourer. They have two children. The house is clean and comfortable, and to all outward appearances satisfactory.

J.D. and F.M. would like to be legally married.

Case 5.—Illustrating need for Divorce to be made cheaper.

George M. married Mary M. when he was 18, and she was 17. The first baby was born eleven months after marriage.

Soon after marriage Mary started drinking and going with other men. They quarrelled and she left him, but he took her back after a week or so. For a time there was an improvement, but she began immoral habits again, and used to go away for months at a time. A second child was born and he hoped for improvement. She left him for a few months, after which his mother took them in and encouraged her to lead a respectable life.

He found that she was pregnant by another man and deserted her, and went to Glasgow. She went into the Union Hospital to be confined. When the Guardians came upon the husband for the expenses he was able to prove that the child was not his.

Mary M. belongs to an immoral family, and is now living with another man by whom she has several children. George M. after finally leaving his wife lived with his mother until 12 months ago. Since then he has lived with Anna J. They have a nice, clean, comfortable home and appear to be living happily together. A healthy baby was born to them two months ago. They think a deal of it, and wish it could have been legitimate.

George M. says he will marry Anna if his wife dies.

Case 6.—Illustrating need for Divorce to be made cheaper.

Jane B. married Fred B. when 22 years of age. Soon after the marriage he began to ill-treat her and would not work. Jane B.'s parents helped them in business, but Fred B. continued to ill-treat his wife, and on one occasion gave her a beating. She took out a summons, but did not face the Court. After five years of unhappy married life she left her husband and returned to her parents, taking her two children with her. The husband was to pay an allowance of 3s. per week. At the end of nine months he ceased to send the money and Mrs. B. has never heard from him since.

For seven years Mrs. B. lived with her parents. After their death she found it a great struggle to live and pay the rent.

Mr. C. came forward and helped Mrs. B., giving her money to pay the rent, and taking lodgings in the house. Mrs. B. and Mr. C. have lived happily together for four years, and there are two children of this union. They regret that they are not married both for their own and their children's sake.

Mr. C. provides for Fred B.'s two children as well as for his own.

Case 7.—Illustrating need for Divorce to be made cheaper.

Richard S., aged 26, married Susan S., aged 20, and they had five children in nine years.

They lived at first with Mrs. S.'s parents. The husband deserted his wife about six months before the birth of the second child. He came back, and they took a house and lived together for more than two years, when he again deserted her after the birth of the fourth child.

When the fourth child was seven days old, the husband threw an oil lamp on the bed, went downstairs, set the mantel-piece on fire, and went out and stayed away for a week. A neighbour saw the blaze and put it out. Mrs. S. applied to the inspector of the N.S.P.C.C. Mr. S. came back at the end of a week, but after another fortnight deserted his wife, taking his wages with him.

Mrs. S. got a separation order, and the husband was ordered to pay 10s. a week. After that she heard nothing more of him for three years, when he came back and begged her to give him another trial, promising to give up gambling and drinking. They were comfortable for seven months, when he informed her that he was going to leave her, and live with a Mrs. F., but would give no address. She reminded him that another baby was expected in a few months, and he said that she must go to a hospital.

When the baby was born there was practically nothing in the house. The husband came to see her, and gave her eighteen-pence. A month or two later she received a postcard stating "By the time you receive this I shall be miles away."

Some months later she heard that he had returned to Mrs. F.'s house, and found him there. She asked him for money, and he told her in the presence of Mrs. F. to "go on the town and earn it." The N.S.P.C.C. Inspector went to see the husband the next day, but found he had gone away, and Mrs. S. has never heard of him for two years. She and her children went into the workhouse. She was enabled to come out by an offer of work from a former employer.

Six months after coming out of the workhouse she went to live with a male friend as his wife. She has now one child by this man. He is 34 and she is 32. She says she would not be living as she is now if she had not been driven into it.

The man with whom she lives also keeps her legitimate children. The present home appears to be a very good one indeed. Whenever visited, the mother and children have been clean and tidy.

Mrs. S.'s legal husband was a moulder, a good workman, and earned 2l. a week regularly. He gambled and drank, and often thrashed his wife, and put her out, and she has had to stay out all night.

Case 8.—Illustrating the need for persistent drunkenness being included in the reasons for Divorce in the interests of the children.

Alfred B. and Anna B. have two children. The husband earns 32s. 6d. per week when in full work. He appears to be a thoroughly decent and respectable man. The wife is an inebriate and pawns everything for drink, and has neglected her two children. The husband left her without obtaining a formal separation order, but returned on her promising to reform. She was no better, and as a result of her conduct her husband obtained a separation order, but after three years he again took her back on her again promising to reform. After two months she became as bad as ever, and furniture, bedding, clothes, everything was disappearing to the pawnshop.

The children were reported from the schools, as being neglected, and proceedings were taken against the parents for neglect. It was proved that the wife was to blame and that the neglect was due to her drunken habits. The Bench postponed their sentence on her agreeing to go to an inebriates' home for 12 months. She has just come out of the home, but is little better (if any). She has for some time suffered from alcoholic neuritis which appears to be leading to some paralysis. She has no will power.

She is with her sister at present. If she returns to her husband she will pawn everything again and wreck the home. In the meantime the children are without a mother, and a portion of the man's income is being diverted from the home. He has been paying 7s. 6d. per week for his wife while in the home. He has now agreed to allow her 5s. per week since she has left the home. He has been on short time for the last year and his earnings have probably not averaged more than 26s. per week.

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Case 9.—*Illustrating the need for persistent drunkenness being included in the reasons for Divorce in the interests of the children.*

James S. and Maria S. have four living children, age 15, 14, 10, and 7 years respectively. For the last nine years the woman has been addicted to drink and has neglected her home. The children have again and again been reported from the schools as being in a filthy, verminous, and neglected condition. They have been supplied with clothes from the Clothing Guild, and the mother has pawned them for drink. Mrs. S. is always sodden with drink, but never gets violent, or obviously unmanageable. She has served one term of imprisonment (three months) for neglecting her children, and during her absence the home was in a much better state and the children better looked after by a neighbour. The husband is in regular work and his employers state that he never misses a day's work, and has earned 38s. per week regularly for years. The husband is continually being fined for non-attendance of the children at school. Under the present law there are no facilities for getting Mrs. S. sent compulsorily to an inebriates' home for a long period.

A few weeks ago Mrs. S. developed tuberculosis of the lung and was removed to the Union Hospital. Since then the home has been in a better condition, and one of the neighbours is looking after the children.

Case 10.—*Illustrating the need for persistent drunkenness being included in the reasons for Divorce in the interests of the children.*

John F. married Catherine F. in 1896. There was one child of the marriage. When the child was nine months old Mrs. F. left her husband on account of drunken habits and ill-usage of herself and her child. The child went to live at its grandmother's, and Mrs. F. went to service for seven years.

At that time she met Charles M., a widower with one child. She went to live with him as his wife. They now have two children of their own, one three years old and another six months old.

They have a good home, and are very happy together, and C.M. would marry C.F. if it were possible.

Case 11.—*Illustrating the need for persistent drunkenness being included in the reasons for Divorce.*

A.G. and D.G. have been married for 31 years. There have been 12 children of the marriage, of whom four are living at present. A.G. is a bricklayer, and has always been a drunkard. His drinking habits have been worse during the last six or seven years.

He handles his wife roughly, throws things at her, &c. She says that she cannot remember when she has had a proper proportion of his week's wages. Last week she had 5s., the week before 1s., and for several weeks before that nothing at all.

There are two boys at home aged 12 and 15 years respectively. The other two children are older, and have left home.

D.G. makes her living by picking coke and iron from a pit heap and selling it. She would get a divorce if she could.

She does her best to keep together a satisfactory home.

Case 12.—*Illustrating need for persistent drunkenness to be made a reason for cheaper Divorce.*

N.T. lives with a single man named R.M.

She has two children, one by her husband, and one by R.M. N.T. left her husband some years ago because of his ill-treatment and drunkenness. On more than one occasion she had to go to the hospital for treatment after his brutal ill-usage of her. He was a hawker, and spent the bulk of his earnings on himself. He is now rejected by keepers of common lodging houses, and has several times been in prison for being drunk and disorderly.

N.T. would like to get a divorce and be free to marry the man she now lives happily with. The home is a good one.

Case 13.—*Illustrating need for incurable lunacy to be included among reasons for Divorce.*

Norah M. was married to a soldier about 20 years ago; 14 years ago her husband had to be removed to an asylum, leaving her with two children. He is still in the asylum, and his condition is not improving.

After his removal Mrs. M. applied for relief. She was offered the choice of scrubbing work at the work-house from 7 a.m. to 6 p.m. for 9s. per week and some bread, or 2s. 6d. per week and 6 lbs. of bread, with permission to have two lodgers. Mrs. M. chose the latter as she did not wish to be away from her children all day.

J.B. came as a lodger. He appears to have been from the very first kind to her children. He saw her strivings, and would buy boots, clothes, &c., for the children if he thought she could not do so.

Mrs. M. told the health visitor that it was the kindness to the little ones that won her heart. She remarked to the health visitor, "I suppose you think it was wrong of me to drift into our present way of living, but it was such a struggle, and he was so good to us. I have never been killed with big wages, but we are as comfortable as we can be."

In answer to a question she said, "I often wish we were free to marry because we do not like our children being illegitimate, and people look down on a woman so if she lives as I am doing."

Case 14.—*Illustrating need for aggravated cruelty to form grounds for a Divorce.*

Florence G. married Alfred G. when they were both 20 years of age. She had known her husband for four years before marriage and he appeared to be "all that he should be."

They lived first with his parents and quarrels occurred. They took a house of their own.

The first child was born 10 months after marriage. When the baby was six months old the husband became more unkind and began beating his wife. He had previously threatened to cut her throat. Another child was born, and things became worse. The husband drank and the wife constantly bore the marks of his ill-usage. He knocked one of her front teeth out and gave her black eyes, &c. She suggested leaving him, but he threatened to murder the children if she did.

He now earned 35s. per week, but spent so much in drink that she had to take in washing and lodgers to pay the rent. Her health began to suffer from worry, pain, and hard work. She told no one her troubles, and they preyed upon her mind. Finally, she had a serious breakdown, hastened by the shock she received when one of the children was burnt whilst in charge of the father for a short time. As a result she had to be removed to an asylum where she stayed 8½ months.

She came out and rejoined her husband and became pregnant again. Within a few weeks of her return it was a constant occurrence for her to be struck by him. She left him and went to her mother's for a few weeks, but returned before the third child was born. On the night of the child's birth the husband was hopelessly drunk, and she had difficulty in getting a midwife.

The ill-treatment and drunkenness continued, and when the baby was three months old she went to her mother's with the two youngest children. After 2½ months' absence she was persuaded to give him another trial. She stayed with him 10 weeks, was marked by him three times, and again became pregnant. She then took the children to live with her mother and obtained a separation order. The payments were not kept up, and when the last child was born Mrs. G. and her mother were in dire poverty.

The health visitor reported, when visiting on account of a birth, that Mrs. G. and her mother were making the best of their resources. Subsequently a post was found for Mrs. G. as housekeeper through the efforts of the health visitor. The guardians have taken the three youngest children into the cottage homes. Mrs. G. pays her mother for keeping the eldest child. The guardians prosecuted Mr. G. for not keeping up the payments and he was sent to prison.

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Mrs. G.'s employer reports that she is giving her every satisfaction. She finds her particularly obliging and easy to get on with, and is absolutely convinced that her husband had no just cause for complaint and that Mrs. G. has been more than tolerant.

Case 15.—Illustrating the need for desertion being included in the reasons for Divorce.

James T., aged 25 years, and Mary T., aged 24 years, were married three years ago. They never had a home, but lived in furnished lodgings.

There was one child of the marriage, born at the lodgings, and Mary T. had to go into the workhouse soon after its birth.

The husband would not work, beat her several times and deserted her.

Mary T. says that her husband was intimate with other women, and it is believed that the child died from congenital syphilis.

Mary T. is now living with a widower who has one boy. The home is a comfortable one, and there it one child of this union. Mary T. says they would be married if she were free.

Case 16.—Illustrating disregard for the marriage tie by persons living in homes of a reasonable standard.

Harry N. and Clara N. were married 22 years ago. Soon after the marriage Mrs. N. found that her husband had been, and still was, intimate with a woman named Florence, to whom he took his earnings. This continued for years, and, in addition, her husband abused her, turned her and the children into the street, told her he would not maintain her, and that she was a good-looking woman and could earn her living "on the streets."

Clara N. confided her troubles to a friend named Arthur W. Arthur W. provided a home for her, and she lived with him as his wife, going to her husband's home daily to clean and cook, and see the six children of the marriage off to school.

After this she found that she could not attend to both homes, as she was having more children. Her husband said he could not get anyone in the house who would do as well for him and his family, so an arrangement was made that they should all live together in one "good-sized house," and this they are doing at present.

Arthur W. is the tenant and master of the house, and Clara N. lives with him as his wife. Clara N. states that Arthur W. is kind and considerate to her and all her family, and that her husband, who pays for the board of himself and his children, has never said a wrong word to either of them since he joined them as a lodger.

The husband used to pay 26s. per week board for himself and four children. Two of the children have now gone out to service, and he now pays 20s. At one time before the joint household was started Harry N. tried the experiment of having "Florence" in "to do for the family," but she was not satisfactory, and the home and children were neglected. Clara N. now has five children by Arthur W.

She says that if she and Arthur W. could have obtained a divorce for 20l. they could have raised it in order that she and Arthur W. might be married.

The home in which these two families live is a comfortable and tidy one.

Case 17.—Illustrating disregard for marriage tie by persons living in homes of a reasonable standard.

Kate B., a woman of 45, has been married. Her husband was a bookmaker, and drank heavily, and she had a bad time with him. There are five children of the marriage.

She now has three children by the man with whom she is living. He is a blacksmith's striker, and earns from 22s. to 25s. per week.

There are two grown-up sons living at home. Kate B. states that she did not want to get married again while her sons were single and living at home, and that she did not want to tie herself. The sons are

now aged 25 and 23 years respectively, and earning their own living.

She thinks now she would have no objection to getting married. Apparently her fear was that if her second husband turned out to be a drunkard like her first husband, the children would suffer.

She states that the man with whom she lives has been very good to her. The son of 25 years states that he and his brother have always been quite satisfied with the arrangement, and that the man has been a good "husband."

Case 18.—Illustrating disregard for the marriage tie by persons living in homes of a reasonable standard.

Mabel T. had two children by her husband. The first child died. When the second was seven months old she went into hospital to undergo an operation. Shortly after she came out she found her husband was going with another woman. She therefore went back to live with her father, and received an allowance of 4s. per week from her husband.

Subsequently she made the acquaintance of B., a married man with a wife over 40, and two sons aged 18 and 15 respectively.

Mr. B. took the child of the marriage. Mrs. T. went to live with B. as his wife, and they now have two children. Mrs. B. helps in the house, goes charing to her sister's, and sleeps with the children. She has to go through the bedroom occupied by her husband and Mrs. T. in order to get to her own.

They are all said to live comfortably together, B. being good to both women. Mrs. B. nurses Mrs. T. when she has her babies, and looks after her well. Mrs. B.'s two sons, aged 18 and 15 respectively, also live in the home.

It is a clean and tidy home, and the children are well cared for. Mrs. T. would have liked a divorce in the first instance.

Case 19.—Illustrating that difficulty in obtaining a Divorce does not necessarily tend to make the marriage tie permanent, or to impede irregular unions.

Frank W., a married man, and Ellen M., a married woman, live happily together with their two children and E.M.'s legitimate 12-year old girl. The children are all well cared for and look healthy and happy.

F.W. left his wife because of her constant bad management, loose ways, and lack of principle.

E.M. left her husband on account of laziness and drunken habits. He never gave her sufficient money, and she had to take in lodgers or go out charing to make "both ends meet."

F.W. is by trade a railway labourer, and earns 20s. 6d. per week. He gives E.M. 20s. for house-keeping.

E.M. does not know require to go out charing or to take in lodgers, as she had to do while living with the man to whom she was legally united.

Case 20.—Illustrating need for Divorce to be made cheaper.

Walter B. married Eliza B. two years ago. He treated her badly and deserted her three months before her first baby was born. She went home to her mother for the confinement.

She is now in lodgings, and has obtained a maintenance order of 8s. per week. She has found that her husband is intimate with another woman, and would apply for a divorce if she could afford it.

Her parents are respectable people, and she is a good mother to her child.

Case 21.—Illustrating how the marriage tie is broken when one of the partners is "impossible."

Percy J. married Christina J. in 1896. There was one child of the marriage.

When the child was nine months' old Mrs. J. left her husband on account of his drunken habits and ill-usage of herself and her child.

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[Continued.]

The child went to live with its grandmother, and Mrs. J. went to service for seven years. During that time she met a widower with one child by his marriage.

She went to live with him as his wife and they now have two children of their own, one three years' old and the other six months' old. They have a good home and are apparently very happy together, and he would make her his wife if it were possible. Mrs. J.'s legitimate child and the widower's legitimate child live with them.

Case 22.—*Illustrating the need for Divorce being made cheaper.*

Harry T. married M.T. Soon after marriage M.T. started drinking and continued to do so up to the time when she eloped with another man. She took with her her husband's week's earnings and has not been heard of by him since.

A.H. married Charlotte H. A.H. turned out badly. He drank heavily, brought strange women into the house, and finally deserted his wife.

Harry T. and Charlotte H. now live happily together with the two legitimate children of Charlotte H. The children are well cared for, and Harry T. and Charlotte H. would marry if they were free to do so.

Case 23.—*Illustrating the need for extending the grounds for Divorce.*

Mrs. M. was deserted by her husband 10 years ago. There were five children by the marriage, the youngest being seven months old when the desertion took place.

Mr. M. treated his wife very badly, and made her life miserable. He lost his work through drink.

Mrs. M. obtained a separation order, but no payments were made under it. She has not heard of her husband for nine years, and does not know whether he is alive or dead. Four years ago she met Mr. N., who was a widower, and she has since lived with him as his wife. They have two illegitimate children. Mr. N. is devoted to her and has always been most considerate; he would marry her if she was free. She is very unhappy at times because she cannot marry Mr. N., and is sensitive about it.

They have a very clean, comfortable home, and both give one the impression of being very respectable.

There are legitimate children of both parents living with them.

Mrs. M. has some girls in service, and Mr. N. has a son married.

They are all on good terms with Mr. N. and Mrs. M.

The following is the Table referred to and put in by the witness:—

BIRTH ILLEGITIMACY IN ENGLAND AND WALES AND IN CERTAIN OF THE COUNTIES AND SHEFFIELD.

(Taken from Annual Reports of the Registrar General of England and Wales.)

District.	Illegitimate Births in 1,000 Births.	
	10 Years 1888 to 1897.	1898.
England and Wales - . -	43	42
West Riding of Yorks - . -	46	45
Sheffield - . - . -	47	45
Five counties with highest rates.	Shropshire - . -	74
	Herefordshire - . -	72
	Cumberland - . -	72
	Norfolk - . -	67
Five counties with lowest rates.	North Wales - . -	67
	Warwickshire - . -	37
	South Wales - . -	36
	Monmouthshire - . -	33
	Middlesex - . -	31
	Essex - . -	29

District.	Illegitimate Births in 1,000 Births.	
	10 Years 1898 to 1907.	1908.
England and Wales - . -	40	40
West Riding of Yorks - . -	43	43
Sheffield - . - . -	43	45
Five counties with highest rates.	Herefordshire - . -	65
	Norfolk - . -	63
	Shropshire - . -	63
	Westmorland - . -	62
Five counties with lowest rates.	Cumberland - . -	60
	South Wales - . -	33
	Warwickshire - . -	31
	Middlesex - . -	29
	Monmouthshire - . -	29
	Essex - . -	27

Mr. WALTER MILLEDGE called and examined.

22,186. Are you secretary of the Bradford City Guild of Help?—I am.

22,187. Is that institution connected with any branch of the church?—No.

22,188. Undenominational?—Entirely undenominational.

22,189. Has the fact of the question of divorce been brought up at all before you?—Yes, I wish to explain that I am not speaking on behalf of my society or committee. They have given me permission to give evidence, but I represent myself alone.

22,190. How long have you been at work?—Six years.

22,191. In this capacity?—Yes.

22,192. Then will you give us the benefit of your personal experience on the question of divorce? I suppose it is the poorer classes you work amongst?—Yes, it is quite the poorer classes. Perhaps it would be best for me to explain the system of the Bradford Guild of Help. It is a movement entirely undenominational which seeks to enlist the work of the ordinary citizen both in ordinary charitable work and in co-operating with the public authorities. In Bradford this has been developed to a considerable degree. We are co-operating first of all with the guardians, very closely; then with the health depart-

ment more or less satisfactorily, and even in such a direction as county court and police court work there has already been established some regular system of communication. The methods of the Guild of Help are briefly these. We sub-divide the city areas into districts in which there are groups of responsible persons who are willing to take up individual families; and the value of our experience proceeds from the fact that our oversight of the families is prolonged. We have actually now cases we have been watching for four or five years. I must admit that the quality of the work is not of the greatest precision arising from the natural variation in the capacities of the voluntary worker. But the whole of the information is focussed at the central offices and all special work, such as legal aid, is done through the offices. The voluntary worker presents the case and introduces the woman or the man who may need the legal assistance, and in that way I have had information about the cases which have arisen both in the police court and the county court.

22,193. To what extent have you come across cases in which divorce is required?—It is extremely difficult to judge of the proportion, and naturally we have to try and avoid the idea that the abnormal class we deal with represents any large proportion, but in that class there

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[Continued.]

is a very large proportion of cases where one feels that divorce is absolutely necessary.

22,194. On what class of ground?—Well, chiefly cruelty and neglect to maintain.

22,195. Do you mean cruelty such as makes life practically impossible together?—Yes.

22,196. And neglect to maintain, the same kind of thing?—Yes, arising, as Dr. Scurfield suggested, largely in the great proportion of cases from drunkenness re-acting.

22,197. Do you think then it would be an advantage for the classes with which you have to deal if some local facility were given to bring their cases before the court?—I do.

22,198. I do not know whether your experience enables you to say what court, or whether that is a matter more for a lawyer?—No, I fear my experience does not lead me to say which, except that I feel it would not be satisfactory that it should be the police court. I feel the county court is more suited, but so far as I could venture an opinion it would appear to me that it would be most satisfactory to give the jurisdiction to the county court in the preliminary stages. I should suggest in all cases where divorce was proposed for the people of the class I am speaking of that there should be a considerable probationary period equivalent to the present separation order, but that no separation order should be granted in an indeterminate way as it is now.

22,199. Would your view be that according to your experience if separation lasts it produces disastrous results?—Certainly.

22,200. Of illicit connection?—Yes.

22,201. In those cases your view would then be that it would be better to give them the opportunity of forming regular connections?—Exactly.

22,202. Have you formulated any view as to what grounds you would base divorce upon?—It is extremely difficult for me to find that. My attitude is based solely on a consideration of the welfare of the children. I do not feel that the question of the guilt of the parents, or the moral effect on the parents, really should outweigh the consideration of the welfare of the children.

22,203. Then can you tell me this, what in your actual experience are the causes which you find produce the greatest disadvantage to the children?—Of course the chief cause is drink, which, whether in either parent, leads to extreme neglect. The question of unfaithfulness works out chiefly with regard to the money question. In the class of case with which I have to deal there is no room for the man to spend money on anybody else, and if he is unfaithful and dissipated there is an immediate result in the neglect and suffering of the children at home.

22,204. How does cruelty chiefly come before you?—Chiefly with regard to the cruelty to the woman. Of course, the effect of constant cruelty on the woman leads to her being obliged to neglect her children and leads to the suffering of the children. The difficulty in that regard is even now, with regard to separation orders, that it is extremely difficult to prove persistent cruelty to an ordinary police court magistrate until you get very aggravated assaults, and so on. My view that matrimonial causes should be removed to the county courts is based on that fact. My experience is that these cases are dealt with alongside criminal cases where you need pretty conclusive and pretty strong evidence; and the evidence which to my mind would be considered by a county court judge, say, as evidence of persistent cruelty, is disregarded by the police magistrates.

22,205. You mean there are so much worse cases they do not quite appreciate the importance of the particular case?—Exactly.

22,206. You sum it up here: "The attitude of the magistrates being that of paternal tolerance, and their apparent purpose being to send the parties away to settle their differences themselves." That is what you say in your proof?—Yes. That has been a fairly common experience.

22,207. Then there is another point you make here, that under the order by which so much is payable, the

payment should be made into court?—I think probably the figures as to reconciliations which have followed separation orders are totally misleading. Our experience is that unless the money is paid into court there is every reason to expect that the parties will come together again, however undesirable it may be that they should come together again, and the usual course of events is that two or three applications are made for separation orders. The magistrate grants perhaps a second—in rare cases even a third—and then refuses to grant any more separation orders in view of the fact that the parties come together, and the difficulty at present is that it is very difficult to induce the magistrates to use their prerogative to order the money to be paid into court.

22,208. You mean it is usually payable to the woman?—Yes. It is usually to be paid to the woman.

22,209. You say here "Either the man goes to the home of the woman to pay, and cohabitation is renewed, or the woman may have to seek the man on pay day in public-houses or other undesirable places, and run the risk of abuse or temptation"?—Yes.

22,210. And that you regard as extremely undesirable?—Extremely.

22,211. It puts a pressure on her which she sometimes cannot resist?—Yes.

22,212. Or brings her into contact with bad influences sometimes?—Yes.

22,213. You would recommend, therefore, that the order should always be to be paid into court?—Yes.

22,214. And no discretion?—And no discretion.

22,215. Would it be an advantage that there should be a check on reconciliation in that way?—I think so. Under the present conditions separation orders are not granted on at all frivolous grounds; they need to be very strong grounds, and if they are granted, I imagine it is considered to be best for all parties.

22,216. And then you say, the stress of circumstances and the way the order has been complied with brings them back in an undesirable manner?—Exactly.

22,217. Of course, if you adopted the county court, you would apply the same position as to paying there?—Yes, exactly.

22,218. Then paragraph 2 of your memorandum; perhaps you would read that and tell me what you intend to convey by it?—"It is desirable that, in course of time and under certain limitations, the relief granted under a separation order may be made absolute, by process in a divorce court. My experience shows that, when a separation order has been observed for some considerable period, one or both parties usually enters into irregular sex relations with other persons, and further"—I should say the remainder is a very woolly finish to the sentence; it does not convey what I wish to say. It should say: "further; it may be noted, a man can be released from payment of maintenance if he can prove misconduct on the part of the woman." The rest of the sentence can be left out.

22,219. That she has no redress?—Yes. I think that may be disregarded.

22,220. At present an order cannot be obtained for adultery?—A separation order by the magistrate?

22,221. Yes?—Yes, that is so, but supposing a separation has been granted and the man is paying maintenance to his wife and children, and he can prove misconduct on her part, he is free from payment of the maintenance.

22,222. Would you alter that?—I would never allow him to go free from the maintenance of his children.

22,223. At present there is no order left for maintenance with regard to the children?—Exactly.

22,224. If the order in favour of the wife goes?—Yes, and in view of the fact that she has every temptation to misconduct herself under a separation order—or every opportunity—it seems preposterous he should be relieved of his own children on those grounds.

22,225. They can be put upon him through the parochial officer?—Yes, if they become chargeable.

22,226. You would have it that he should still pay for the children, even if there is misconduct?—I think whoever grants exemption in that case should

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consider the case of the children as being of the first importance.

22,227. And should see who should have them and who should be paid for them?—Yes, and probably hand them over to the public authority as guardian.

22,228. Then you would like the judge on circuit to be appointed to hear these cases in divorce if you could have it?—Yes; I should suggest that the preliminary question of the probationary period—the separation order—might be dealt with by the county court; and when it comes to the absolute relief that it should be heard by a judge on circuit.

22,229. Would you be in favour of the county court judge or the police magistrate, whoever it is left to, having power to make a separation order on the ground of adultery alone?—Yes.

22,230. But the divorce order to be made by the highest tribunal that can be provided to deal with it?—Yes.

22,231. I see you sum your point of view up at the end, that your "remarks are intended to give emphasis that the children are the main consideration in matrimonial cases; that in refusing relief to the parties to an unhappy union the children are penalised"?—I think it is not realised how far-reaching that is in its effects. When relief is refused to parties to an unhappy union, the possibility is that the children get no sort of chance whatever; and however guilty the parties may be, it appears to us who are following up the history of the children, that it is unwise to allow the consideration of the guilt of the parents to affect your decision with regard to the future welfare of the children.

22,232. Would you make a different rule as to where there are children and where there are not?—Yes.

22,233. And refuse relief in the cases where there are none?—No, I do not think anything is to be gained by refusing relief.

22,234. You would still leave the same rights?—Yes.

22,235. But the children's position would be influential in any case where they existed?—Yes.

22,236. (Mr. Brierley.) I understand you to be of opinion that separation orders, as distinct from divorce, would still be necessary, Mr. Milledge?—No, only as a provision —

22,237. Yes, but I mean that it would be necessary to retain them?—Yes.

22,238. We have heard, and I suppose you will agree, that there are a large number of cases where separation for a time is necessary for the protection of the wife, but also that there are a large number of cases where mere temporary protection seems to be all that is necessary and the parties become reconciled?—Yes.

22,239. Is that your experience?—No, it has not been my experience largely. That would probably apply to a better class of case than I deal with.

22,240. I do not think so. It has been given in evidence that that is the result of a very large proportion of cases in which separation orders are granted?—I attribute that to the fact that it was not desirable that they should come together, but that under the existing arrangements for the payment of money they naturally do.

22,241. You think in those cases they are forced to come together again?—Yes.

22,242. Assuming even these probationary separation orders are necessary, do you desire that they should be taken from the police court and given to the county court judge?—Yes.

22,243. Would not that place very great difficulties in the way of women who really require protection? To begin with, in point of time how would they really be able to apply to the county court?—From the point of view of time?

22,244. Yes, I presume in Bradford the county court does not sit every day, or anything like every day. Two or three times a month, does it not, or something of the kind?—I do not think they would be handicapped in that respect. With regard to protection, they could immediately get police protection if that

were necessary, I should imagine—apart from the application.

22,245. They would have to apply to the magistrate on that ground, I suppose. What is the real objection to the police court; that they refuse to act except on very extreme evidence of cruelty, is that it?—I think it is extremely difficult for anyone to re-adjust his attitude after dealing with criminal cases.

22,246. But is that what you think with regard to the magistrates at Bradford—you think they do not grant the separation orders unless the evidence of cruelty is very great?—Yes.

22,247. Is that what you really mean?—Yes.

22,248. One can only conclude that courts of summary jurisdiction must differ a good deal from each other because we had a witness, Mr. Pickstone, from Bury, who was a county court registrar and an experienced police court advocate, and he said that in his opinion, if the jurisdiction were taken away from the justices and conferred on the county court judge, three-quarters of the cruelty cases would disappear, because the judge would not attribute any importance to a large number of cases that charged cruelty which the justices now acted upon. It seems to be quite a contrary opinion?—Yes, I cannot account for that.

22,249. You say that the result of your experience of the Bradford magistrates is that they require very strong evidence before they will grant a separation order?—Yes.

22,250. Is that the chief reason why you would wish the jurisdiction to be transferred to the county court judge?—Well, there is the question of the payment of the order, you see. They have all the facilities for the collection of moneys.

22,251. Then, again, have you really any experience of the respective methods of recovering money in the county court and the police court?—Not a great many years.

22,252. Again, we have had a good many witnesses who tell us that the means of recovering money in the police court is better and simpler than that, in the county court. No means have to be proved, and it is much less expensive?—No means have to be proved in the case of maintenance orders?

22,253. No, it is not legally necessary to prove the husband has any means before the husband can be committed for non-payment, and in the county court it is; and the costs are considerably less, and the police are at the bidding of the magistrates, and are at least as able to deal with the details as the county court bailiffs are. I only want to know how much experience you have of these cases?—I get a good many county court matters as to administration orders, so that I am familiar with both courts. It may be a difference only of local administration, or local staff.

22,254. (Judge Tindal Atkinson.) If the county courts take over the separation orders, and then adultery is to be a good ground for separation, why should not county courts deal with divorce; because the county court judge in the one case would have to deal with all the materials that he would have in the divorce case. Why should not, instead of sending the parties to the circuit, the county court judge deal with the whole matter. It would be far cheaper to the parties?—Yes.

22,255. And more within the reach of the poorer classes?—I thought there was some general hesitation in allowing the county court judges to take it on.

22,256. You rather form your opinion on the expression of other people?—Yes.

22,257. More than upon your own?—Yes.

22,258. But if you give your own opinion as being accustomed to the county courts, can you see any reason why the county court should not have jurisdiction for divorce where the poorer people are seeking relief. What is your own individual opinion?—Having no experience except of the police court and the county court, I choose the county court; but if there is a better court I am not in a position to judge.

22,259. Do you agree with other witnesses that it is of the greatest importance to the interests of the children that the county court judges should have

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power to direct the custody of children and access to them?—I do.

22,260. Do you feel that that is really a necessity at the present time?—An absolute necessity even where relief is granted, frequently the children are in almost as bad a position; the maintenance order is not adequate for their upkeep, and really they need protection.

22,261. (*Sir George White.*) Just one or two questions. In what particular would you differentiate your work from the health committee's work in Bradford?—The health committee's work is, of course, on very similar lines. We follow up their cases individually; we have five or six lady health inspectors who send cases to us. The difference is that whereas they are able to pay one visit a quarter, perhaps, or one visit a month if it is a bad case, we are able to visit once a week or twice a week if necessary.

22,262. Then you are really a voluntary agency assisting with the health committee's work?—Yes.

22,263. Your evidence goes to show that you consider courts of summary jurisdiction now give separation cases too seldom?—Yes.

22,264. Not too frequently but too seldom?—Yes.

22,265. Is that a matter of experience which is gained by your visiting the courts and being present?—Well, it is a matter of experience with regard to

families where we felt this was the only way of making a constructive effort, and we could not get the orders granted.

22,266. You felt there ought to be a separation order, and the magistrates did not consider the evidence sufficient to grant it?—Yes.

22,267. Would you advocate at all maintenance orders being paid through employers of labour where it can be done?—No, I should not advocate that.

22,268. Why?—I am always inclined to suspect anything that is likely to interfere with a man's opportunity for employment, and so on.

22,269. You think that might in some cases bring about a discharge?—Yes.

22,270. The employer might object?—Yes.

22,271. (*Chairman.*) Thank you very much for your evidence, Mr. Milledge. Oh, I ought to ask you the meaning of one question. At the very first line of your proof you said this: "The fact that the question of divorce has never once been raised during my six years' work in Bradford is sufficiently significant." Does that mean that there were no cases, or that the fact that it is not raised shows that the relief cannot be obtained?—I think it was owing to the fact that it was quite out of reach of all these people.

22,272. It was not referring to the fact that divorce was not desired?—No.

Mr. JAMES GREER SILCOCK called and examined.

22,273. (*Chairman.*) Are you a member of the Council of the Associated Societies for the Protection of Women and Children?—Yes, I am chairman of the council.

22,274. Is that associated with any Church society?—No, it is not connected with any Church society in any way.

22,275. Entirely undenominational?—Entirely undenominational. It has been founded for about 60 years, I think, and it has been worked by a council. The object is to protect women and children and to strive for the improvement of the statute laws with a view to the more effectual protection of women and children, and we have been trying to do that for a number of years.

22,276. May I take it your evidence represents on the important points the considered opinion of the council?—Yes.

22,277. I gather from your proof that your societies are "it is believed, the only charitable organisation in the kingdom which endeavours to relieve and to remedy the wrongs of married women by affording them, in cases of neglect, cruelty, outrage or desertion, advice and legal assistance, and by prosecuting or proceeding against the offenders when deemed desirable." Is that right?—As far as we know we are; at any rate as far as the metropolitan area is concerned. Cases from charity societies come to us, and from the police courts, and are sent from outside sources, and diocesan bodies, and we take them all and consider them and do what we can with them.

22,278. There may be other bodies in the country?—Yes.

22,279. Then why do you say you are the only one?—We are the only one which confines itself to this work. Our particular speciality is the relief of women and children. Practically the bulk of our work is to obtain separation orders for married women who are ill-treated, or to obtain affiliation orders for young girls who have been betrayed. But of course every sort of application comes to us in which a woman has been injured in any way by a man. We have about 600, or so, cases every year.

22,280. I have had handed to me your report for 1909, and I dare say we can look at that?—Yes, I think that will explain our work.

22,281. There are a number of cases in that which are called illustrative cases?—Yes.

22,282. Possibly those will help us to see the kind of thing which is being done?—Those are only a few of the large number of cases that we have to deal with, but they illustrate what we do.

22,283. Now the office is in the Haymarket?—Yes, 60, Haymarket.

22,284. No doubt the result of this work is that you have accumulated a great amount of experience and facts?—We think so.

22,285. From what grade of society do the bulk of your cases come?—People who are earning perhaps 30s. a week or 2*l.*, or perhaps 2*l.* 10s., but, as a rule, I would say most of our cases come from people earning under 2*l.* a week.

22,286. Do you go above that sometimes?—Oh, yes. If a woman shows she has no means of prosecuting her own remedies, of course we take up her case, no matter what rank of life she is in. But the bulk of our cases come from this class.

22,287. But having regard to your position as a sort of central body, are you able to say if there exists any demand amongst the poorer classes for divorce?—Well, we do not find there is any demand, but it is impossible for there to be a demand at the present moment. As a witness said to-day, it is impossible to bring it forward. It may be that poor people know that they cannot get it.

22,288. They come to you for the help they think they can get?—Yes.

22,289. And do not come for anything they know they cannot get?—Yes, as far as we know.

22,290. And you do not inquire amongst them?—We have never asked them about the question of divorce, because it never really comes up. The only thing we can say is that we are unaware of any demand.

22,291. Now with regard to this question of divorce jurisdiction, what are the views of your association on that?—Well, of course, we do not like the idea of divorce cases being reduced to the level of a police court or county court case; but at the same time, as a matter of equity, we feel that a remedy open to the rich ought to be also open to the poor. And if that is so—and it appears to be generally accepted—no doubt the jurisdiction must be conferred on a local court. To meet the requirements of the case the only two local courts are the police courts and the county courts; no other court is localised sufficiently to meet all the necessities of the poor. As for the police court, I think one instinctively feels that it is not right that a serious case like a divorce case should be heard along with drunk and incapable cases and petty thefts, and cases of that kind; and, as far as the opinion of my council goes, we put that court out of consideration. The only question that remains is that of the county court. Well, the county court is not quite the same; the cases are not quite the same as in the police court; but still they

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[Continued.]

are very similar, and we think that the county court should be given the jurisdiction, but that, if possible, means should be taken to prevent these cases being mixed up with the ordinary cases. We know perfectly well that cases in the county courts are rushed through; that the judges are overworked; that there is a very great difficulty in dealing with the work at the present moment, and more and more is being put on them; and we think the only way the county court could properly deal with the business is that there should be a sort of special or circuit county court judges; that the plaintiff should be put in and the case heard wherever there is a county court at the present moment. But if it is going to be mixed up with the ordinary cases by the ordinary judge on his ordinary circuit, we feel the cases will not be heard thoroughly, and that the cause of morality will in the end suffer. Therefore, we are clearly of opinion that there should be special circuit county court judges to come round; that the registrar of the ordinary local county court should take the plaintiff, and do anything necessary in the beginning, but that they should be heard at a special session.

22,292. Speaking of the people you deal with, do you think if that jurisdiction is conferred, a number of cases will be brought forward that at present cannot be?—Well, a number of cases might be, but it is impossible to say; we do not know. It is like the case of the demand. There are a certain number of cases that might be brought forward, but whether they will or not is a matter of conjecture.

22,293. At any rate they would have their opportunity?—They would have their opportunity, and I think they ought to have their opportunity.

22,294. With regard to the expenses at the county court you think there should be a vastly reduced scale of costs?—I think so, if it is to be brought to the ordinary level of the ordinary poor people. But I think there is no reason why we should make divorce proceedings so very cheap. I should make them pay something; if a man or a woman could get divorce for 5*l.* instead of 30*l.* or 40*l.*, as at present, I think they would be fairly well off, whereas if they wanted a cheaper remedy they might take the ordinary protection and separation order.

22,295. You would encourage them to work for the higher relief?—Yes, and I think there ought to be some incentive of that kind given them.

22,296. With regard to the separation orders, would you retain the jurisdiction of the magistrates?—Most certainly. I cannot understand how anybody knowing the police court and the county court, for a moment should suggest the cases being transferred from the police court to the county court. It is absolutely impossible to realise any money in the county court, for an ordinary poor woman at any rate. In the police court you can. The man is arrested if he does not pay. In the county court it takes two months perhaps to get an order for 10*s.* and then probably you do not get it paid, and you have to repeat the process every time.

22,297. Then you would leave the magistrates to deal with that question of protection?—Yes.

22,298. Would you give the magistrates power to make an order where there is adultery only?—I do not think so. I think that that is a question purely of divorce.

22,299. Not necessarily. I mean anybody can apply for a divorce or a judicial separation on the ground of adultery under the present system?—Well, I do not see why they should not. At present a woman can only get a separation order in the case of infidelity if the man brings the woman into her own house.

22,300. No?—I understand so; cruelty I thought it was held to be.

22,301. No, that is not so, not unless there is persistent cruelty?—I understood so, and we have been acting on that.

(Mr. Brierley.) I think there is a question of its justifying her leaving him and then charging him with deserting her.

(Chairman.) It may be that that is a round-about way of putting it.

(Witness.) I think you will find there is something, but, of course, I am not up on that point.

22,302. I do not remember any case of that kind. It may be, but I doubt it. At any rate we need not discuss a legal problem. But I gather from what you say you would prefer that the magistrates should not have the extended jurisdiction for adultery, but leave that to the higher court?—Yes, if you can call the county court a higher court; a different court—a civil court. One seems to be a civil remedy and the separation is a punitive remedy.

22,303. One of the defects of the law you point out is that there is not sufficient power to make orders with regard to the children?—Yes, that is very clear.

22,304. Where the women do not want anything, but they want support for the children?—They want support for the children.

22,305. You think something should be done with regard to that?—I think the man is bound to support his children, and should be made to support his children no matter whether the wife requires or can claim support. I should like to say about separation orders that I think the general idea seems to be a mistaken one. We look on separation orders as a pure means of bringing pressure to bear on the husband to keep the peace with their wives, and to make them pay over a certain sum. We do not look upon it as a means of separating them, but it is a sort of intermediate step for reconciliation, and to our knowledge there are numbers of reconciliations, and we should be very sorry to see separation orders done away with or changed in any way.

22,306. Would you recommend that a separation order should be made of a temporary character?—Certainly not. I recommend, as I have in my proof, that they should be permanent; that when once given nothing should change them. Let her go back to her husband if she pleases. If my idea of putting pressure upon the husband is right it is the best way of doing it. In fact it is the only way. If the husband does not treat her well when she goes back she can leave him; she has her order; she has not to renew it.

22,307. Would not you give the magistrate a discretion to set aside the order on any ground?—No, I would not. Of course, you cannot take away discretion. You could not say that a magistrate should not have discretion to vary an order under any circumstances; that would be asking too much. But certainly I should say the mere fact of cohabitation should not destroy the validity of an order.

22,308. You mean if he treated her cruelly she can —?—Let her take her order to the magistrate.

22,309. Then are there any other matters with regard to separation orders you want to suggest?—First there is the condition of leaving the husband beforehand.

22,310. I think you need not elaborate that; that has been before us very clearly?—Then the case of persistent cruelty. The difficulty we have found in the case of persistent cruelty is that it simply means persistent physical cruelty according to the magistrates' decisions, and we think certain other things should be added to that persistent physical cruelty. Magistrates will only keep to one thing; you can either charge a man on drunkenness or persistent cruelty or neglect to maintain; but you cannot join the three or four things up together. There is no such thing as a cumulative effect at present, and we do not see why the law should not be changed to give a cumulative effect. Put infidelity, neglect to maintain, drunkenness, or a sort of slight persistent cruelty all together. I think in that case a woman really has some right.

22,311. If each does not support the point for which it is made, the cumulative effect would not either. That is a very dangerous thing in a way?—I do not quite understand.

22,312. Supposing the magistrate asks himself a simple question: Has this man been drunk? No. Has he been guilty of actual physical cruelty? No. Has he been guilty of infidelity? No. You are rather suggesting that if you add the three together he might say Yes?—Well, the home should be held to be impossible by a slight amount of all three together.

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22,313. That could hardly be sound unless each would support a charge. However, I see your point. May I suggest this, that you do not want cruelty to be strictly confined to blows?—No.

22,314. There might be cases in which the torture was inflicted in some other way as to amount to cruelty?—Yes, along with a certain amount of actual physical cruelty; but the magistrates require such a large amount at the present time that a woman has to be half killed almost before she can get a separation on the ground of persistent cruelty.

22,315. Then, as to habitual drunkenness, you have points to make on that?—Well, what we want is to have some other definition for the term "habitual drunkard."

22,316. Have you been able to assist us so far as to draft an amended definition. You would confer an inestimable blessing if you could?—I am afraid I cannot. I did think about it, but I have not had time.

22,317. If your subsequent thoughts evolve one, perhaps you will send it to us. What is the nearest you can give us at present?—I am not prepared at the present time to give you any definition of it. The difficulty we have at the present time in the term "habitual drunkard," as everybody knows, is that the man must be liable to cause injury to himself or others, or be incapable of managing his affairs. Well, causing injury to himself or others is held by the magistrates to be half killing his wife. There might be something short of that. A man comes home, smashes things up, turns his wife out into the street and uses filthy language, and these are things which when put together should be sufficient.

22,318. But if you recommend a law you must put it in a form that a magistrate can interpret. That is why I ask you if you have a definition?—No, I have not thought of it so far as that.

22,319. But if it is sufficient that the drunkenness is such as to make life intolerable without being sufficient to come within the present definition, that would meet your view?—Yes. May I say, with regard to drunkards, that I see many witnesses talk about a drunkard being sent to inebriate homes. But they omit to mention who is to support the children and wives when the husbands are sent to the homes? The reason why the magistrates in London will not convict a man of habitual drunkenness is that there is nobody to support the family. They do give something now, but if a man is sent away for a year to a drunkards' home, there is nobody to support the children. That should not be lost sight of.

22,320. But if he is a habitual drunkard, though not actually prosecuted for it, and is not sent to a home, how does he earn anything?—Oh, they all earn something.

22,321. What remedy do you suggest for that?—I have not any; but the other is not a remedy. Sending a man to an inebriates' home is not a remedy. What the remedy should be is a different thing. To stop the sale of drink might be one remedy; it would be a very drastic one, but it would be a remedy.

22,322. But have you no suggestion at all? The question is providing money where it does not exist?—Well that is a great difficulty and has been an insoluble one at the present time, and I think it should not be passed over.

22,323. Are you in favour of granting a divorce on the ground of such drunkenness as you describe?—No, I think a separation order is quite sufficient for that.

22,324. Then the woman cannot have any opportunity to restart herself?—I do not quite follow.

22,325. If she was divorced she could start herself again probably in some other way?—With another man?

22,326. Yes, but if she cannot do that I cannot see what remedy you suggest?—Well, I know the women we get as complainants in these drunkard cases, and if you only saw them there is very little chance of a second marriage. They are old, worn out with children, and trying to make both ends meet, without any beauty or good looks left. It is useless to think of a fresh start in that way for them.

22,327. You are speaking of the wife of an habitual drunkard?—Yes, and all cases that come before us except in the case of very young people who have had some tiff, and run up to get a separation order, which they do not get.

22,328. You point out the difficulty, but you do not recommend a remedy?—Well, I did not know I should be asked to recommend a remedy.

22,329. That would have been really most valuable. Then you point out the same thing we have heard before, that a sufficient sum is not given to the wife and children?—Yes, that is a wilful neglect to maintain. My object would really be gained if you struck out the word "wilful." It is the word "wilful" that causes all the trouble and the different decisions by the magistrates. They say if a man is not earning, though by his own fault, he cannot be supposed to be wilfully neglecting to give money that he has not got. If you take that out and put in "negligent"—or some word like that—"neglect to maintain," it would meet the difficulty in that case.

22,330. Then you suggest the magistrate should be required to give a larger sum for maintenance?—Yes our difficulty is that very often a man is earning 30s. or 2l. a week or more, and he gives her 5s. a week, out of which she has to pay the rent. We have had cases in which magistrates have held that that is a sufficient compliance with the Act. We want to have it stated that the magistrate, when a case of this kind comes before him, should really come to some decision in his own mind, and state it on paper, as to what the proper sum is for a man to pay who is earning a certain amount. Then the wife is not going to execute that order if she knows he has no money, but when she knows he has, as in numberless cases that come before us, then is the time she could have that order executed.

22,331. As to payment into court, do you suggest that magistrates should be required to ask a wife if she wished the money paid into court or to a society, and so make the order accordingly?—Yes, we find it very necessary for the money to be paid to somebody.

22,332. Would it not be better to make a definite provision that it should always be paid into court?—Well, we wanted to let the magistrate down lightly; not to insist on the magistrate doing a certain thing. I do not think magistrates will be very fond of it, and certainly the officers of the court will not be. It will give them an infinity of trouble. Our Societies receive large sums of money paid under order of the court through us; we pay it out again; and in other towns I suppose there are similar societies. We take it in from the one and give it out to the other, and we have large sums of money passing through our hands.

22,333. Well, the point is that in many cases it is not desirable that the wife should go for the money herself?—In very few cases is it desirable, and we think something ought to be done.

22,334. Then "molestation"?—Molestation is really the case of a man forcing himself back on his wife after she has obtained a separation order. At the present time we have one case which was really a very bad case, if I might be allowed to read it—it really occurred lately—in which the man forced himself back.

22,335. Is it in the proof?—It is in the first illustrative case, on page 15 of the report. It is not in my proof.

22,336. We will have it inserted in the note?—Yes, it is a case in which the man forced himself back on his wife three separate times, and he locked her in a room with himself; when she got out she went to the constable, and he said: "No, your order is broken; I cannot do anything." She went to the magistrate and said: "My husband locked me in for an hour, and the constable will not turn him out. What is to happen?" It happened three times.

22,337. What is the remedy for that?—It only shows that if the order had been permanent we should have had no trouble of this kind.

22,338. You suggest then that the order should be left standing?—Yes, and insist on the police carrying it out. As I say, they refused to help her or to turn her husband out, and the magistrate refused to give her any relief.

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22,339. But if you leave it standing, supposing the woman had an order and by it the husband had to pay 10s. a week, and then the man comes back. I suppose you would allow the suspension of the payment while they lived together?—Yes, that would be simply a matter for the magistrate to adjudicate on when he was dealing with it after. As a rule, in the labouring classes, the wife is only too willing to stick to her husband and get on with him as well as she can. She does not want to put him to trouble.

22,340. I think the whole of that point is covered by leaving the order standing?—Yes, that would be quite satisfactory. (*The following is the case to which the witness referred:* "Persistent cruelty: On January 5th last, a wife complained that her husband only three months after the marriage in 1893, came home one night drunk, and struck her, giving her a black eye. Another afternoon he came in drunk, and without any provocation, tore her air, struck her in the face, cutting her mouth and blackening her eye. He also stabbed her under the eye with a penknife. On another occasion after threatening to scald her and the children took a kettle of boiling water and threw it across the room just missing her. A neighbour hearing the shrieks of the children came in and advised her to take the children out until he had gone to sleep. She walked about the streets until very late that night, and on returning was again attacked by the husband, who was hiding behind the door, and he gave her two black eyes and nearly broke her nose. The neighbours came in and themselves gave the husband into custody, and he was bound over to keep the peace. That night he came home like a madman, spat at her and broke a mirror with his fist. She was granted a separation on the ground of cruelty in 1901. He paid nothing under the order, and was sent to prison in default for one month. After coming out he continually molested her, and got in and locked her up in her room one evening for one hour, and refused to leave, and the police summoned by the wife said they could not turn him out as the order had been broken. She was thus forced to resume cohabitation, but the ill-treatment recurring, she got another separation order. He again forced his way in, and has been continually drunk, and the police have charged him on several occasions, for which he has been imprisoned. The societies were asked to intervene, and obtained another order, on the ground of persistent cruelty, with 15s. per week. The societies communicated with other societies who found boots for the children and something for the support of the wife, as the man had paid nothing under the order.")

22,341. Now, desertion?—Well, the difficulty is that the wife cannot, as a rule, find out where her husband is living. She knows he is somewhere—that he is in one of these Rowton lodging-houses, or somewhere round the corner, but she cannot find him. The only people that can find him are the guardians, and they can have a warrant issued. We only suggest the wife should have the same power of having a warrant issued if the husband cannot be found on the issuing of the first summons. It would be necessary to issue a summons first, and then if he cannot be found, there is no reason why a warrant should not be issued. Then the next point is "Separation agreements."

22,342. I think we know that point. Does it amount to this, that although a separation agreement has been entered into, if the case comes before the magistrate he should be able to treat that as waste paper?—No, we do not want him to treat it as waste paper, quite; that would put us in a very awkward position sometimes. We want him to act upon it, and to hold that a breach of it is "wilful neglect to maintain." In many cases a wife has left her husband for three or four years, and she might find it very difficult to prove she had any claim on him if the magistrate treated it as waste paper.

22,343. You would give the magistrate power to enforce it?—Yes, as I say in my proof, I would give the magistrate the power. "The failure of the husband to make or continue his payments under an agreement should be cognizable in a police court, and

"should be held to constitute 'wilful neglect to maintain' within the meaning of the section."

22,344. The waste paper point that was in my mind was that the agreement should not necessarily be treated as a bar to the ground of desertion?—Yes.

22,345. At present, if there is once an agreement, there is no desertion?—Yes.

22,346. And it has been suggested to us that in many cases desertion cannot be proved in consequence?—Yes.

22,347. If the woman wished to rely independently of the agreement you would allow her to do so?—Yes, independently of the agreement.

22,348. Or to claim on the agreement?—It would be very difficult to prove the desertion though. It is not as simple a point as appears at first sight, and it is not sufficient apparently for the agreement to be put aside. That is my only point. It is a matter for practical lawyers to adjust, but we want that it should not be a bar.

22,349. Should not be a bar to the magistrate?—Taking cognizance of the case.

22,350. Of a case of neglect to maintain?—Yes. I say the breach of the agreement should be held to be a neglect to maintain.

22,351. Then as to children?—The great difficulty about that is that the father at the present time is not bound to maintain his children. The only way the maintenance of the children can be brought home to the father is by the wife getting an order for herself, which order may, by implication, include an order for the children. It does not in the actual Act, I believe, but that is the only way in which, at the present time, a man can be made responsible.

22,352. Then you would give the wife a right to apply for an order simply for the maintenance of the children?—Yes. At any rate it ought to be laid down that a man is bound to take them himself, or do anything he pleases.

22,353. Without putting them on the parish?—Yes.

22,354. Then that the wife should not be bound to wait for a month for the order?—Yes, that I think has been before you.

22,355. Yes. Then: "Limitations of complaints." You would do away with the six months limit?—Yes. It is not easy to establish what limit should be put in the place of it.

22,356. Is it necessary to put any limit?—Well, I would suppose you would hardly leave it unlimited.

22,357. Why not?—For years?

22,358. As long as the magistrate is satisfied that the offence is one within reasonable time, why not?—You would not, for instance, for persistent cruelty.

22,359. There is no limit in a judicial separation in the High Court?—Is there not?

22,360. But the judge would have to be satisfied that the case was sufficiently recent to require a remedy?—Yes, well, that would meet our view.

22,361. Then "Publicity." What do you think about that?—Well, I really cannot see that there is any advantage in publishing the reports. As you will see county court cases will, as a rule, not be published because they are so small, but the advantages of non-publication seem to me to outweigh the disadvantages. There might be, I suppose, some notice taken of the actual decisions of the court, and there is no reason why the summing up of the judge should not be published if the papers wanted to do it, coupled with the decision.

22,362. Generally speaking, do you think the publication of these cases is good or bad from a public point of view?—Generally, bad.

22,363. Do you desire to go into the question of any amendments of the divorce laws or not?—No, except to say we are opposed to any change in the law more than the fact that adultery on either side should be a sufficient ground for divorce. I think we object to any other causes—drunkenness, lunacy, or desertion being considered sufficient grounds.

22,364. What would you say to desertion if it is prolonged for five or six years, with no reasonable prospect of any return; the kind of case that I have

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had so frequently in my experience of the husband or wife going to America and setting up a new home there (and it is almost impossible to prove that because of the expense) and people having to save up for years to try and get a divorce—if they can prove it. What do you say to a case where there is desertion like that, and you cannot prove the adultery, and yet there is no hope of re-union?—I think the great point in that case would be collusion. If you are going to open the door to desertion you will have any number of people, if they want to get rid of one another, going off to America and being lost for two or three years.

22,365. They do not seem to have found that in Scotland?—I wonder how many there are in Scotland. We are opening a very wide door here: but there are very few cases in Scotland, I think, and if we let it be known that divorce was going to be granted for desertion you would find an enormous amount of collusion.

22,366. But supposing you are satisfied it is a wilful act on the part of the wrong-doer, leaving his wife and children with no provision whatever?—No, I think the State ought to enforce it in some way as much as they can—when they go to America they cannot. But can you distinguish between a foreign country and being lost and going to the North of Scotland and not being found? If you cannot distinguish in one case, is it right to distinguish in another?

22,367. Why not, if the petitioner says, "I have never heard of my husband for years, he went away saying he would never come back; he went away, and here I am with my children"?—Cases come to us like that frequently, where the man has gone off, and he finally comes back, and we get a separation order, or we have a reconciliation.

22,368. I was dealing with those cases where he does not come back?—Well, is it ever possible to know if he is coming back?

22,369. You would leave the unfortunate woman to wait in hopeful expectation for years?—It is one of the difficulties she has to go through.

22,370. In Scotland in half the cases it is so?—Well, not knowing anything about the cases in Scotland I cannot say anything.

22,371. But you take the view that both husband and wife should be put on the same footing?—Yes, I think so.

22,371a. (*Sir George White*.) I understand you are in favour of making all the separations practically permanent?—Yes.

22,372. Is not that just as much a dissolution of the marriage tie as a divorce would be under such circumstances?—No, I do not think it is, because I look on these things as a means of enforcing a reconciliation. People will come back. If you have a divorce there is no chance of their ever returning; whereas if you have a separation order a man gets tired of having to pay after a long while, and if the woman worries him a bit he will come back to her.

22,373. Are there not many cases where it is desirable he should not come back?—I cannot say there are many. There are cases where a woman has been knocked about and battered considerably, but we have had cases where the woman has gone back even after that and they are living not so uncomfortably with their husbands.

22,374. But when a man is of that brutal character why should you expect he will treat her better afterwards?—The fact of the woman's going back to the house breaking the order prevents a very large number of reconciliations; the wife is afraid to go back. But if she knew it was not going to break the order she would be more inclined to give her husband a fresh trial, and I do not think we should put any obstacle in the way of her doing that.

22,375. Then you are opposed to the extension of divorce in any case except adultery?—Yes. I rather should say my council, which I represent, are opposed.

22,376. You named 5*l.* as a fair sum that these poor people might be able to get under certain circumstances when they applied for a divorce. Do you think that is not an impossible sum for a great number

of working men earning 20*s.* or 21*s.* a week?—It is a large sum, but if you reduce it really to 3*l.* or 2*l.* 10*s.* you might equally say that of every woman who has no means, it is equally large. A woman is earning nothing and has no money. The husband may have. Unless she is helped by her friends she has no possibility of getting any money.

22,377. Do I understand you are in favour of removing such financial restrictions so as to enable these people under certain desirable circumstances to get a divorce?—Yes.

22,378. Then why should you fix any sum at all? Why should not it be possible for them to get assistance so that they are not prevented by any financial sum from getting redress?—Because I think you must draw the line somewhere. If you allow them to have divorce without costing them a penny, you will have any amount of divorce cases being brought forward which are not really suitable for divorce. I think you must draw a line somewhere, and the persons who want a certain legal remedy should have to put themselves about a little to get it. I do not say necessarily 5*l.*, 3*l.*, or 4*l.*; but I think they ought to be somewhat in excess of the amount of a separation order.

22,379. Then you really would be in favour of removing anything that is a real restriction?—Yes. As a rule, I think a woman can always borrow of friends and relations up to a certain amount if she wants a divorce. I would rather, of course, she took a separation order as being easier and affording opportunity of reconciliation.

22,380. Have you any experience as to inebriates' homes?—No, I have no knowledge of them personally; it is only what one gets by reading of them—apparently it is not much good.

22,381. (*Sir William Anson*.) We have had evidence that in the case of a permanent separation order, the parties are under the impression they may not meet again, and the permanency of the separation order puts difficulties in the way of reconciliation. Have you any experience of cases of that sort?—No, none that I am aware of. We have known numbers of cases where they have gone back. You mean under the impression that they should not.

22,382. (Yes, that the permanency of the separation order actually forbids them to associate?—No, I understand that the husband understands that he must not go back to the wife without her consent, in a way; but I do not understand that the wives understand there is anything to prevent them going to their husbands if they wish to give them another chance.

22,383. Then, as far as your experience goes, the permanency of the separation order would make for reconciliation?—Yes.

22,384. Then, with regard to the criticisms that have been made on the present law; you say that "persistent cruelty" needs definition?—Yes.

22,385. But you cannot supply a definition?—Well, I do supply it in a way by saying I think other matters ought to have a cumulative effect along with physical violence. It is a question of the extent of physical violence. Very strong physical violence is persistent cruelty by itself, but we have many cases where the husband is so careful, or has been to court before, that he stops short of actually marking his wife but treats her in a disgusting and disgraceful way otherwise, when he is drunk or not drunk, and we wanted to get round that.

22,386. Then you would allow other elements to come in to constitute persistent cruelty within the meaning of the Act?—Yes, it does not say "persistent physical cruelty."

22,387. That does not assist one as to a definition?—I say drunken habits, persistent filthy language, and neglect, might all be taken together to be held to be sufficient.

22,388. That leaves a large discretion?—Yes.

22,389. But the difficulty at present is the question of definition?—Well, magistrates have held that "persistent cruelty" means "physical cruelty." We want to do away with the word "physical" which they have read into the Act though it is not there.

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22,390. But that makes it more difficult to define cruelty than it was before if besides physical violence you have a number of other elements?—Yes, but I understand in the High Court we have constructive cruelty which is not physical cruelty at all, and if it is not impossible for them to do so, it ought not to be so with regard to the magistrates.

22,391. As to "habitual drunkenness" you find the same difficulty of definition?—Yes. I do not say it is not possible to find a definition, but I have not thought it out sufficiently at the present time to supply one.

22,392. Then in the case of "wilful neglect to maintain" there is a double difficulty of definition, is there not, as to whether the neglect is wilful and as to whether the maintenance is reasonable?—Yes. Well, the way I propose to get out of that is to strike out the word "wilful." That is very simple. If the magistrate will only say what he considers a reasonable allowance in each particular case and base the order on it to be executed whenever the man has money, if he has not at the present time, I do not think there would be much difficulty.

22,393. It is a difficulty of finding a form of words which means just what you want to say, and no more?—Yes, but I should be quite content to have the word "wilful" struck out.

22,394. With regard to desertion; you do not think there are many cases of permanent desertion?—No, I do not say that. I imagine there must be.

22,395. I understood you to say to the Chairman that you did not think desertion should be a ground of divorce on the ground that there was so much uncertainty about the permanency of it?—Yes; well, I said I think, that we know numbers of cases in which men have come back after a long lapse of time. But there may be hundreds where he does not come back, and which, of course, do not come to our knowledge. I only mean that however long you put it—four or five years—we have instances, I think, of people coming back after that time.

22,396. I notice you say that the demand for divorce on the part of women who are injured by these various acts on the part of the husband—cruelty, drunkenness, and neglect to maintain, or desertion—is not so much a desire for divorce as a desire for maintenance?—Yes.

22,397. Have you found many cases in which either the man or the woman would have tried to get a divorce if it had been within their means?—That is impossible to say. There has been no suggestion of a divorce.

22,398. They do not contemplate it?—They do not contemplate it because they know it is not possible. It has never come within their horizon, so to say.

22,399. If it was within their means you prefer the county court to the stipendiary magistrate, or the quarter sessions?—Yes, for divorce.

22,400. But suppose it was possible to bring the High Court within their reach by assisting them to the High Court or bringing a judge of the High Court within reach of them, would you prefer that to either?—If you could have the High Court judge to come round to all the places where the county court judge comes now, certainly. The higher the judge you have the better, providing you can arrange for the counsel's fees, and that the costs should be small.

22,401. You had not mentioned the High Court as possible?—Well, it seemed to me so impossible on account of the costs.

22,402. But if you grant jurisdiction in divorce to the courts of inferior jurisdiction, I see you say that the danger of collusion would be very great?—Yes, I think so.

22,403. The High Court judge would have more experience in those matters; a judge of the High Court would be more awake to the risks?—I do not suppose, really, that it is the High Court judge that requires the experience. It is the King's Proctor, who looks after things and sees what is going on under the surface. But what I meant was, if the case came to be such a small case as a county court case, there is nobody to take any pains or care. The cases will be rushed through like an ordinary case, and a man and woman wanting to separate can easily set up a case. There is nobody to inquire if it is true or not, and

nobody wants to know anything except to get the case through as quickly as possible.

22,404. And you think that is what would happen if the county courts had divorce jurisdiction?—I am afraid so, unless there was some means or mechanism of seeing what was happening.

22,405. Apart from that, you would wish divorce to be as accessible to the poor as to the rich?—Yes.

22,406. But you would not extend the grounds on which divorce was given?—No.

22,407. With regard to the "publicity of proceedings"?—I do not know any ground for publishing them.

22,408. Have you considered the case of the innocent co-respondent whose character may be at stake?—Yes. But if the summing up of the judge is published, that applies to everything. It is not the summing up of the judge that causes the injury, but the detailed evidence. The only thing that people want to stop is the detailed evidence. Let all the facts be published as fully as possible.

22,409. You would leave it to the judge?—No, I would say the summing up and the verdict or decision are the only things to be published. I would not leave anything to the discretion of the judge in that case. You see it is hardly fair to him.

22,410. (Mr. Brierley.) I understand you to say you would not have cohabitation put an end to an order for separation?—Yes.

22,411. And you think that would tend to reconciliation? Would not it possibly put a great deal of power into the wife's hands?—Yes.

22,412. She might leave her husband without any cause at all subsequent to her reconciliation?—She might, but, as a rule, if a woman has gone back to a man for the children's sake, as she nearly always does, she is not likely to leave him again unless the man becomes impossible.

22,413. I agree the great majority of women are reasonable, but you have exceptions. Do not you think it would be necessary to accompany that provision giving absolute discretion to the magistrate on the application of the husband to vary or discharge the order?—Yes, to vary or discharge the order.

22,414. One hardly sees it would be quite fair to give the wife a right to an order for life, because that is what it comes to?—Yes, the right to an order for life.

22,415. Entitling her to leave her husband whenever she pleases, and then go back to him or else hold him liable under the order, whereas you give him no power of showing that he has been behaving himself, and ought to be released from that order?—Yes.

22,416. Do not you think it would be only fair that if anyone does such as you propose that the magistrate should have an absolute discretion?—Oh, yes, but I do not think I said I proposed he should not have.

22,417. I thought you said so?—I would give the magistrate power to vary. May I explain. I think I am perfectly —

22,418. I may be wrong, but I thought you said you would not —

(Chairman.) He said not in temporary orders.

(Witness.) Yes, but I said I thought that the magistrate should have the usual power to vary the order. I would not deprive him of that.

22,419. (Mr. Brierley.) But I do not mean only to vary the amount, but to discharge?—Yes, I meant that. I said I do not think re-cohabitation should be, as it is at the present moment, held to be a full discharge. That is not apparently in the magistrate's discretion. It has been laid down by magistrates themselves; it is not in the statute law, I understand. They hold that that is so, and that is what I want to prevent, because it prevents reconciliation.

22,420. You pointed out the difficulties that arise from the present definition of "habitual drunkenness," and you said you cannot suggest a better one?—No, I said I required time.

22,421. Do you think any definition of the word "habitual" is necessary. Is it not a sufficient definition in itself?—It is a sufficient definition in itself if you do not take it in the legal sense.

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[Continued.]

22,422. But at present by statute "habitual drunkenness" is defined to mean a certain state of things?—Yes.

22,423. Assuming that statutory definition was abolished, you would simply get the words "habitual drunkenness"?—Yes.

22,424. Do you think those are sufficient?—I do.

22,425. That really no definition is necessary at all?—No.

22,426. That habitual drunkenness should be habitual drunkenness and nothing else?—I think so, most decidedly.

22,427. It would remove a good deal of difficulty, would it not?—It would remove a great deal of difficulty if you remove the reference to the Drunkard Act.

22,428. I understand your council is not in favour of extending the grounds beyond adultery?—No.

22,429. Should I be wrong in saying that that was because of what have generally been considered Scriptural reasons?—Well, with certain members of the council it would be.

22,430. I did notice that four out of the nine were ministers of religion?—Yes.

22,431. So that that may have considerable weight?—It has considerable weight.

21,432. You would not extend the grounds at all beyond adultery?—No, the council certainly would not.

21,433. (Chairman.) You said there were a great many cases in which there was desertion and the people did not come back?—No, I said there might be any number. I said we only knew of those in which men

did come back. There may be hundreds of others that have never come back and have never come before us.

22,434. No, because they do not come to you unless they can enforce a legal remedy by serving the person?—Yes.

22,435. Take the hundreds of cases that there might be; what is to become of the wife and children all the time that desertion goes on?—She can earn her own livelihood as she does in a great many other cases. There are a great many who are never married and have to support themselves.

22,436. But those possibly have not children?—No, possibly they have not.

22,437. But we are told that it frequently leads to adulterous intercourse when they are left like that?—We have not found that.

22,438. We have a great deal of evidence to show that they do sometimes form illicit connections?—If a woman is young and fairly good-looking—

22,439. Is the class of case that chiefly comes before you that of an innocent woman complaining of the conduct of her husband?—Yes.

22,440. You do not go into these questions, for instance, that the doctor dealt with—searching out people in their homes, and so on?—Well, our investigating inspector comes to us and says—

22,441. But that is only because of the complaint made?—Yes.

(Chairman.) Thank you very much for your evidence, Mr. Silcock.

Mr. LEWIS FOULKES-JONES called and examined.

22,442. (Chairman.) Is your name Lewis Foulkes-Jones?—Yes.

22,443. Are you a member of the firm of Close and Co., 4A, Bloomsbury Square, W.C., which has acted as solicitors for the Associated Societies for the Protection of Women and Children?—Yes.

22,444. Of whom the last witness was a member of the council?—Yes.

22,445. May I then take you a little shortly because you have heard his evidence?—Certainly.

22,446. You, as solicitor, have acted for 10 years in 291 judicial separation cases of which 119 were for desertion; 124 for persistent cruelty; 13 for habitual drunkenness; 16 for wilful neglect, and 19 for aggravated assault, and during that period you have arranged 74 agreements for mutual separation?—That is an analysis of the cases dealt with during that period.

22,447. Now, the first point is as to the necessity of a woman leaving home before an order can be made. You have heard what Mr. Silcock said about that and you agree with that?—Yes.

22,448. You would not put that as a condition precedent to the woman getting an order?—Certainly not.

22,449. Then with regard to persistent cruelty; you would suggest that that should not be limited to mere physical violence, but should extend in other directions?—Yes, we have had cases where a wife has complained of persistent infidelity on the part of the husband, and other cases where she has contracted a venereal disease from him; and those cases, of course, at present are incapable of any relief at all.

22,450. I am not sure that when venereal disease is communicated without the husband knowing—?—Well, one has to show, I think, that it was done knowingly; that the husband was aware of the fact that he was suffering from that complaint at the time, and that is very difficult.

22,451. You always have to establish that even in the High Court?—Quite so, but it makes it more difficult. It is necessary to show that the husband knowingly communicated it to the wife.

22,452. But you mean where he has gone wrong and communicated it whether knowing it or not?—Yes; we suggest that if the wife can show that she has contracted a disease from her husband that that is sufficient ground for granting her relief without making it necessary for her to show that her husband was

aware of the fact that he was suffering from this complaint before he communicated it to her.

22,453. Would not that be met by leaving out the word "persistent"?—The word "persistent" as coupled with infidelity?

22,454. No, there is nothing about infidelity in the Act?—I thought you were looking at my proof.

22,455. No, I was reading it out of the Act?—Yes, I think it would.

22,456. Then the next point, 3, is the question of time; that you would enforce it within a week without waiting a month?—Yes.

22,457. I think that has been fully dealt with?—Yes.

22,458. Then with regard to No. 4, that has not been quite dealt with. You say that husbands who have deserted conceal their addresses. Oh, I think that is the same point. You would allow it on the application of the wife where she cannot serve?—I think there are many cases where that remedy would be very useful, certainly.

22,459. Then what is this point, No. 5, about an agreement being signed?—Oh, I think that was also covered by Mr. Silcock's evidence. You very often find among the working classes that where the husband is about to desert his wife and has resolved that he will leave her, that he hands her a sort of informal document by which he undertakes to pay so much a week, and that it is never stamped.

22,460. You would make it a good document, enforceable by the magistrate?—Yes, the suggestion is that that should not be a bar to proceedings for wilful neglect to maintain.

22,461. You mean it should be considered neglect to maintain if the sum is not paid that is mentioned?—Yes.

22,462. And would you leave the magistrate a free hand in that same case to deal with it?—I think I would leave him entirely free. At present, the moment the husband produces a document like that the woman is out of court—at once.

22,463. That is one of the reasons I suggested it might be treated as waste paper?—Yes.

22,464. You do not want that document to be a bar?—Quite so.

22,465. Then the next point, 6, is that there should be power to apply for maintenance for the children,

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[Continued.]

although the wife could not get an order herself. Is that right?—Yes.

22,466. What is No. 7 about, trial and conviction on a charge of unlawfully wounding?—I think a doubt has been expressed as to whether the right to grant a judicial separation extends to cases where a man is convicted of unlawful wounding.

22,467. And not of aggravated assault?—Yes, when he is convicted on indictment of unlawful wounding.

(Chairman.) I forget what the words are. You have it there, I think, Mr. Brierley. There are two causes, one is aggravated assault and the other is assault on indictment.

(Mr. Brierley.) Conviction upon indictment of an assault on her. I think they have made an order in the case of unlawful wounding. I remember Lord Bowen making an order at the Manchester Assizes.

(Chairman.) Does not assault cover unlawful wounding within the meaning of that Act?

(Mr. Brierley.) I believe so.

(Witness.) I think there are one or two decisions more or less in conflict.

22,468. (Chairman.) Why should not the word "cruelty" simply cover all those cases. Suppose you said the application might be made if the husband had been guilty of cruelty towards his wife?—Yes, I think that would cover it.

22,469. It would make all those provisions unnecessary?—Yes.

22,470. The cruelty would have to be such as the magistrate thought within the law was necessary to guard against in order to protect the wife?—Yes.

22,471. Now, No. 8: "No order can be made in favour of a married woman if she shall be proved to have committed an act of adultery," and you suggest, I gather, that if the husband is living openly in adultery she should still have a remedy—at any rate to the extent of her children?—To the extent of her children, but not only if her husband is living in adultery with another woman. I think if the wife has the children it should be possible for her to obtain an order upon her husband to support them, even if she has committed adultery.

22,472. Whatever her conduct has been?—I think the magistrate should have a discretion. My experience is that a married woman who has gone astray is far more jealous of the welfare of her children and far more careful not to give them a bad example than the husband would be in similar circumstances.

22,473. You suggest "that in cases of this kind the court should have a discretionary power having regard to the general conduct of both parties to order the husband to at least maintain the children so long as they shall remain in the mother's custody." Would you also suggest that there should be discretionary powers to discharge the order where the woman has committed adultery?—Yes, I would.

22,474. So that she should keep her order although she was still living in adultery?—Well, I think the court should have a discretion. If the father and the mother are both equally bad and the mother has the children it seems rather unfair that she should have no support at all.

22,475. Then do you mean a general discretion in all the circumstances?—Yes.

22,476. Bearing in mind the duty of a man to maintain the wife as long as she remains his wife?—Yes.

22,477. You say: "As to the effect of judicial separations upon the morality of the parties the societies do not have many opportunities of forming any opinion, as, in the majority of cases, they lose sight of the parties after the order has been made." I may take that as correct?—That is so.

22,478. You say, "that the societies are very seldom asked to assist a woman in whose favour they have obtained an order, to resist an application by the husband to have the order discharged upon the ground of the wife's adultery"?—Yes.

22,479. That is not often the case?—Very rarely, and, to that extent, I think one is justified in assuming that, so far as women assisted by these societies, at any

rate, are concerned, the result of judicial separation orders has not conduced to adultery.

22,480. Perhaps they do not come and ask you in those cases?—It may be so, but with that qualification it rather suggests that it is in comparatively few cases that the women who have obtained these orders go astray.

22,481. May I take it that the cases you have to deal with are the cases where the woman wants assistance because of the wrongful conduct of her husband in some way or other?—Yes.

22,482. You do not get the cases where Dr Scurfield speaks of where they have gone off on their own lines living with other people?—No, because these societies would refuse to assist a woman who was not, in their opinion, deserving of their assistance.

22,483. You find in cases of desertion the husband very seldom defends on account of the wife's conduct?—Very rarely, indeed.

22,484. You would not withdraw the jurisdiction of the courts of summary jurisdiction in granting orders?—No.

22,485. But you would agree with Mr. Silcock in certain modifications of the Act?—Yes.

22,486. Which he mentioned?—Yes.

22,487. What is your view about extending facilities of divorce to the people you come across?—Well, I am here to represent the views of the council, and the view of the council is not that the grounds for obtaining a divorce should be extended, but that so long as that remedy is within the reach of the well-to-do it should be extended to the poorer classes.

22,488. Might I ask for your own view independently of the council?—My own view would be to extend the facilities for divorce, in certain cases.

22,489. On what ground?—On the ground of insanity, I think, and long-continued desertion.

22,490. Would you give us the reasons which lead you to that conclusion?—Well, in the course of my experience with the society, and in the course of my general practice, I have come across cases where women have been deserted for a very long period of time, but have been unable to obtain the relief they desired—a dissolution of marriage—owing to there being no evidence of cruelty or adultery.

22,491. And then insanity. What is your opinion on that?—Well, simply on general grounds that—

22,492. Have you had any cases before you in which it was a hardship?—Well, I had a case in my own private practice some time ago which was rather surprising; that was a case where one of the most eminent specialists in London pronounced the patient to be incurably insane; but he recovered and is now following his usual occupation of a doctor. But that opinion was expressed at a very early stage after his seizure.

22,493. The suggestion has been made that there should be an interval during which the matter should be tested—an interval of two or three years, or something of that kind—and then if pronounced incurable should afford a ground for divorce?—That would provide for such a case as I have just mentioned.

22,494. Then I think you are impressed with the poor law system which prevails in Scotland as Lord Salvesen told us?—I was certainly much impressed by it.

22,495. Do you think that might be adopted in England?—My own feeling is that no proposal for extending divorce jurisdiction to the county court will bring the remedy of divorce really within the reach of the poorest classes of all. A man receiving a pound or a guinea a week cannot, I think, be in a position to take even county court proceedings except in very rare instances.

22,496. Without having some such system as that?—Yes.

22,497. But you would retain the jurisdiction of the magistrates for maintenance and protection?—I should distinctly, because it is the only remedy in reach of a poor woman suffering from the cruelty or neglect of her husband.

22,498. Would you be in favour of the magistrates giving an order for separation on the ground of

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[Continued.]

adultery, or would you leave that to higher courts?—Personally, I should be in favour of extending it to the magistrates.

22,499. (*Mr. Brierley.*) Would you be in favour of giving the husband the same right of applying to the magistrates as the wife. If you extend the ground of adultery, that is equally the husband's as the wife's?—Yes.

22,500. For what it is worth, you would give the husband the same rights as you would give to the wife?—Yes.

22,501. Then with regard to desertion, you have made the suggestion about the possibility, or desirability, of granting a warrant in case the summons is not effective. Do you think it would be desirable that the magistrates should have power to imprison for desertion?—No, I do not think so.

22,502. In a great many cases of these desertions that take place, the husband is a thoroughly lazy man, is he not?—Yes.

22,503. And even if an order for payment of maintenance is made, that does not always result in payment?—No.

22,504. Do not you think it would be desirable, as already exists on the application of the Guardians under the Vagrancy Act, that there should be given to the magistrates a power to send to prison in any case of

desertion?—There might be some cases perhaps in which that power would be useful, but on the other hand that is a remedy which would rather operate against the interests of the wife.

22,505. During the time that he was in prison of course she would get no money; but in a good many cases she does not get any money now?—What she really wants is the weekly payment.

22,506. That, undoubtedly, is what she wants if she can get it?—If the husband so wilfully neglects his duty as to disregard the order, then he does go to prison as a rule.

22,507. He can be sent to prison for not paying; but there are some cases where he will not pay, and if the wife has once become chargeable the Guardians apply to have him sent to prison?—Yes. I should be afraid that you could not—

22,508. You are afraid it would be exercised too freely to the detriment of the wife?—It would nearly always operate against the interests of the wife.

22,509. (*Chairman.*) Might not you leave it to her to decide whether she would apply or not?—I do not think they would ever apply.

22,510. (*Mr. Brierley.*) I do not think they would. What they want is the money?—They very rarely have any vindictive feelings against their husbands.

(*Chairman.*) I think I ought to thank you very much for your evidence, Mr. Foulkes-Jones.

Adjourned.

Winchester House, St. James's Square, London, S.W.

THIRTY-THIRD DAY.

Monday, 27th June 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The Right Hon. the EARL OF DERBY,
G.C.V.O., C.B.
The LADY FRANCES BALFOUR.
The Hon. LORD GUTHRIE.
Sir WILLIAM R. ANSON, Bart., M.P.
Sir FREDERICK TREVES, Bart., G.C.V.O.,
C.B., LL.D., F.R.C.S.

Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour Judge TINDAL ATKINSON.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

(*Chairman.*) I have much pleasure, and I am sure we all have, in receiving the Warrant of His Majesty appointing Sir Frederick Treves as a member of the Commission. I hold it in my hand if any of you would like to see it.

The Rev. HERBERT HENSLEY HENSON called and examined.

22,511. (*Chairman.*) You are the Reverend Herbert Hensley Henson, Canon of Westminster and Rector of St. Margaret's Westminster?—That is so, my Lord.

22,512. I think you have been asked by the Commissioners to attend and give evidence before them in connection with the subject that they are inquiring into?—Yes.

22,513. Have you been for 23 years a clergyman of the Church of England?—Yes.

22,514. And for 22 years, I think, you have been beneficed?—Yes.

22,515. You have been good enough to supply us with a proof of what you wish to represent to us. Perhaps some parts of it might be read, but about the others I might ask you questions; I daresay in the course of your duties you have learned something of the life of the people, and I gather from your proof

that your studies have enabled you to know a good deal about the history of the Church?—That is so, my Lord.

22,516. Would you mind taking your proof from the beginning, just after where I have asked you, and if you will read it to us I think we shall be able to follow sufficiently, and then we can ask you a few questions upon it?—"The existing law of marriage and divorce are admittedly"—

22,517. I think you have started later than where I have?—I was starting at the Memorandum.

22,518. But there are some previous observations I should like to have?—"I have been invited by the Commissioners to attend and give evidence, but I am not aware of any special qualifications which should authorise me to do so. I have been for 23 years a clergyman of the Church of England,

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The Rev. H. HENSLEY HENSON.

[Continued.]

"and for 22 years I have been benefited. My duties have compelled me to learn something of the lives of the people; my studies have enabled me to know something of the history of the Church. I am professionally engaged in the effort to teach Christianity, and to interpret the Scriptures. It is perhaps my misfortune that I have been compelled to follow closely the course of religious politics. These circumstances will perhaps suffice to indicate the obvious limits within which any evidence that I could fitly offer must be confined. I am solely interested in the moral, religious and ecclesiastical effects of whatever legislation is recommended and passed. What is to be the attitude of the Church of England towards the law? How far is it possible to find a middle way of agreement in which the social reformer and the moral teacher can walk together? Is it practicable to combine the liberty of divorce, indispensable in a modern democracy, with the unalterable principles and ideals of the Gospels?"

22,519. Might I ask you, in your view as to the present democracy in this country, do you mean that liberty of divorce is indispensable?—I should say the history of mankind has made it clear that some liberty of divorce is indispensable, and all the circumstances of modern democracy, whether English or non-English, have abundantly confirmed that impression.

22,520. That is what you convey by that interrogatory there?—Yes. "The following memorandum will serve to show the Commissioners the general view which I take of the whole subject, and will provide the materials for any oral questioning which they may think it worth while to add. I shall be ready to offer grounds for the statements here presented, and to explain any ambiguity which may be found in them. In order to protect myself against misunderstandings which might readily arise from so brief a statement I take leave to send in together with this memorandum a copy of a small book on Christian Marriage, written some years ago, which appears to me to cover the main points on which I should desire to insist."

22,521. I have a copy of that before me. It is published by Cassell and Company?—Yes.

(*Earl of Derby.*) And whom is it by?

(*Chairman.*) The witness.

22,522. What year was that published in? I do not see the date of it?—I think it was in 1904.

22,523. Well, it is quite of recent years?—Yes.

22,524. Then this is the memorandum you follow with. I think it is much quicker to read it and then ask a few questions, than my asking the details?—"The existing laws of marriage and divorce are admittedly unsatisfactory. They are objected against as illogical in themselves; as unequal between rich and poor, and between men and women; as harsh and capricious, inflicting intolerable hardships and yet facilitating the gravest scandals; as widely injurious to the public morals by lowering the whole conception of marriage, and by circulating throughout the country disgusting narratives of sexual depravity. There is, perhaps, an element of exaggeration in the present depreciation of the law. At least it is important to remember that, however serious may be the defects of the existing laws, there is no satisfying evidence to show that the marriage laws have been more satisfactory at any previous phase of the national experience. A calm examination of the relevant facts will hardly lead the student of English society to the conclusion that the standard of national morality has declined in any conspicuous degree within recent years; nor is this conclusion really affected by the emergence from time to time in small sections of society of marked moral deterioration."

22,525. It has been suggested by some witnesses that the standard of morality is not so high as it was 50 years ago. What is your view about that?—Well, my Lord, I should extend the review a little bit longer, and I should ask for some reason why 50 years ago is the period selected.

22,526. That is because the Divorce Act was passed in 1857. I am paraphrasing it very roughly, but there

was some suggestion that the Divorce Act did not tend to improve, but the reverse, the state of morality?—I cannot see any evidence for thinking that it is so, because all the evidence up to the 19th century that I can have access to, seems to indicate a relatively low state of public morality, and I know no reason for concluding that the state of things has deteriorated since 1850, and I see many reasons for thinking it has improved.

22,527. Can you give us any of the reasons?—I should have thought if you contrasted the standard literature of the last half of the 19th century with the literature, say, of the last half of the 18th century, there is a very considerable improvement in it. I have prepared a little schedule of what I thought sufficient evidence to bear out the historical judgment which is indicated in that sentence. I would go back to (what seems to me to be the crucial point) the Reformation. If you take the 16th century and refer to the evidence of the Homilies, they tell us that adultery was a vice which reigned above all other vices—Bishop Latimer speaks to the same effect. I would pass to the 17th and point out that the whole Puritan movement was sufficient evidence of the moral condition at the time. I would particularly produce Bishop Sherlock's letter of 1750 as indicating the state of morals in the 18th century. I have an extract of that letter—

22,528. Perhaps you would give us the reference where we would find it?—Well, I have a contemporary copy printed in the year 1750.

22,529. Where was it published?—It was issued by the Bishop to his diocese, and I have one of the copies of the letter issued, but I do not know where I could lay my hands on a modern reprint.

22,530. Perhaps you would not mind reading it and then the shorthand writer will get it?—Writing in 1750, on the occasion of the earthquake in London:—"Blasphemy and horrid imprecations domineer in our streets, and poor wretches are every hour wantonly and wickedly calling for damnation on themselves and others, which may be 'tis much to be feared too near them already. Add to this the lewdness and debauchery that prevail amongst the lowest people The number of lewd houses which trade in their vices, and which must at any rate be paid for making gin convenient to them The unnatural lewdness of which we have heard so much of late is something more than brutish, and can hardly be mentioned without offending chaste ears, and yet cannot be passed over entirely in silence because of the particular mark of divine vengeance set upon it in the destruction of Sodom by fire from heaven . . . Have not all the abominations of the public stews been opened to view by lewd pictures exposed to sale at noon-day? Have not histories of romances of the vilest prostitutes been published, intended merely to display the most execrable scenes of lewdness; lewdness represented without disguise, and nothing omitted that might inflame the corrupt passions of the youth of the nation. What was the encouragement for men to dare giving such an affront not only to the common sense but to the common law of the country? Was it not the quick sale that these pictures and these books had?" This was a letter issued to the diocese and extensively circulated. "A nauseous poem of Churchill 'The Times' published in 1746, confirms the darkest feature in the bishop's indictment of London society. In 1772 Dr. Johnson is reported to have said that it was unnatural for a man and a woman to live in a state of marriage, 'and the restraints which civilised society imposes to prevent separation are hardly sufficient to keep them together.' [*Vide Boswell* Life, ed. Birrell, vol. iii., 23.] In 1781, Paley, preaching an Ordination sermon at Rose Castle, said that in his judgment 'the crying sin and calamity of this country, at present, was licentiousness in the intercourse of the sexes. [*Vide Works*, vol. v., London, 1837.] Two sinister facts cannot be gainsaid, viz., the wide prevalence of venereal disease, and the frequency of duelling. The cause of duels was generally an

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"adulterous intrigue." Those two facts I think in themselves throw a very lurid light on the whole of it.

22,531. Might I ask a reference to the Homilies that you gave us a little time ago?—The Homilies are published in 1859 by the University of Oxford. The reference that I would make is from the Homily on Marriage. It is on page 122, and it is a representative sentence, much like many others, in which it is said that "adultery is that vice which at this time reigneth above all other vices." That homily was commended to use officially by the Thirty-nine Articles in Elizabeth's reign, and is one of the standard documents of the Church to-day.

22,532. These references you use as showing what you have told us a little time back, that it is not right to say that the standard of national morality has declined?—Precisely, my Lord. I wanted to be able, if I could, to strike a note which I think it is necessary to strike in these discussions. If we come with the unexpressed assumption in our minds that the moral state of the nation is deteriorating, then I think we should be in danger of passing a rash and unwarrantable judgment on the Divorce Act. If we look at it as historians and trace the evidence as far as possible, I think we should be in a better position to look at the thing fairly.

22,533. Then perhaps you might resume the proof?—"Nevertheless there are circumstances in the present situation which render it both novel and serious in an extraordinary degree. Of these circumstances it will suffice to mention three:—(1) The necessity of conforming the Marriage Laws to the democratic ideal of civic equality, *i.e.*, making divorce as accessible to the poor as to the rich; (2) the increased difficulty of correlating the civil and the ecclesiastical factors in marriage, *i.e.*, of avoiding friction between Church and State; (3) the profound modification of the traditional conception of marriage, and the understanding of the Biblical teaching with respect to marriage by modern critical science. Of the first it is not necessary to say more than may suffice to explain the assumption that some liberty of divorce is integral to the Marriage Law in a modern democracy. This assumption is not merely based on obvious probability, but on a candid consideration of history. Broadly it is true to say that human society has never been able to dispense with some liberty of divorce. It is, of course, well known that throughout the later medieval period the law of the Western Church prohibited altogether divorce *a vinculo*; but then, that prohibitive law was conditioned by so large and liberal a system of dispensations, and admitted such strange applications of the doctrine of nullity, that in practice marriages were cancelled with scandalous frequency, and the Law of the Church, in spite of its theoretical severity, appeared in the judgment of serious men to have become a potent influence of moral confusion and laxity."

22,534. Have you before you in a convenient form the system of dispensation to which you refer?—I made one or two references here, my Lord. Bishop Creighton, whose authority in these matters was particularly valuable, as I need not remind the Commission, because his studies were mainly devoted to the later Middle Ages preceding the Reformation. Therefore his authority is the highest I could quote of any English authority.

22,535. Can you give us the reference?—On "The Abolition of the Roman Jurisdiction," published in "The Church and the Nation," pages 187 to 206.

22,536. Have you got the date of the edition?—I have not the date of the edition, but it was published posthumously, and therefore it is quite recent. Would you like me to read it?

22,537. If you please?—"Now this seems to me the dilemma in which ecclesiastical discipline was rapidly placed. If it was only good advice it would be comparatively ineffective; if it was reduced to a system and applied universally, it would operate so unjustly that it would cease to be obeyed. The

attempt, however, was made to erect it into a system with two large back-doors of escape—indulgences and dispensations. Indulgences provided an escape from the penitential discipline, which rapidly became impossible; dispensations provided for everything else." "If we ask what were the matters in which dispensations were mostly required, the answer is, release from vows, relaxation of rules about ordination and the tenure of benefices, and especially release from impediments to matrimony. . . . The impediments to matrimony grew in a marvellous way. Blood-relationship was carried to four degrees of consanguinity—at one time to seven—but this was found intolerable. Affinity was regarded as an equal bar. Sponsorship was a spiritual relationship. Marriage itself was 'a formless contract,' in which an agreement *per verba de presenti* overrode any subsequent union. The confusion was endless. These restrictions had their origin in a useful sentiment, but they were extended by perverse ingenuity till the marriage law had been truly called 'a maze of flighty fancies and misapplied logic.' And I fear it must be admitted that this process was acquiesced in because it opened a door for divorce. . . . Marriage was a sacrament, matrimony was indissoluble. But a good many people wished to dissolve it, and a means for this purpose was discovered by fencing round matrimony with so many protections that it was really doubtful if anyone were lawfully married or not." That is the quotation. Now if I might resume the authorities: "The working of the mediæval system is best shown by instances. Bishop Creighton discusses the cases of Henry VIII's sisters, Mary and Margaret, the wives respectively of Louis XII. of France and James V. of Scotland. [*Ibid.*, p. 201 f.] See Professor Pollard's 'Thomas Cranmer' page 139 f. for the luminous case of Anne of Cleves." I shall probably refer to that again, with your Lordship's permission. Also Hay Fleming's 'The Reformation in Scotland,' chapter 13, 'Consequences—Marriage Law Reform,' where a vigorous description is given of the moral state of Scotland on the eve of the Reformation."

22,538. What is that book, because Lord Guthrie would be interested in it?

(Lord Guthrie.) It was referred to in Lord Salvesen's evidence.

22,539. (Chairman.) What is the name of it?—"The Reformation in Scotland," and it has a chapter—chapter 13—headed "Consequences—Marriage Law Reform," which is a very useful chapter. "A scandalous modern instance is the divorce of Josephine by the Emperor Napoleon. Bishop Creighton sums up the matter thus: 'The vast extension of the ecclesiastical laws, in their attempts to cover the whole of human life, had created a system too burdensome to be borne. That system was retained in an appearance of stately grandeur by a subterranean labyrinth of subterfuges. What had been established for the promotion of morality provided means for the utmost immorality. It was impossible to find a way out of the confusion in which good and bad, right and wrong, were inextricably confounded.'" [*Ibid.*, p. 205.] That is Bishop Creighton's conclusion on the mediæval system of the law.

22,540. Then in your proof you pass on to the Reformers?—"The Reformers, both continental and English, supposed themselves to be the champions of the Divine Law of Marriage against the ecclesiastical system, which had created a condition of moral anarchy, in which the Christian conscience was hopelessly entangled, and fundamental Christian morality had been brought into the gravest danger. Accordingly the Reformers effected a great simplification of the law by disallowing ecclesiastical dispensations, and substituting a regulated liberty of divorce, assuming (to borrow a phrase of Milton) that 'honest liberty is the greatest foe to dishonest licence.' It may be added that the experience of nearly four centuries has fully justified both the theory and the policy of the Reformers. While thus divorce, in fact if not also in name, has always been recognised, it is certainly true that the heavy

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"expenditure, at which alone divorce could be obtained, has operated to the grave disadvantage of the poor."

22,541. I do not know whether you have given us any extracts from the Reformers you refer to?—I should refer, my Lord, to Luther, in his Section "On Matrimony," in "The Babylonish Captivity of the Church." It is printed in a book called "Primary Works," edited by the present Dean of Canterbury and Buchheim, a King's College Professor, pages 337 and following.

22,542. Have you the extract there?—I have one extract which I will read, with your Lordship's permission.

22,543. Oh, if you please; it is so convenient for us? —What shall we say of those impious human laws by which this divinely appointed manner of life has been entangled and tossed up and down? Good God! it is horrible to look upon the temerity of the tyrants of Rome, who thus, according to their own caprices, at one time annul marriages and at another time enforce them . . . Matrimony, being a divine institution, is incomparably above all laws, and therefore it cannot rightfully be broken through for the sake of laws, but rather laws for its sake. Learn in this one matter of matrimony, into what an unhappy and hopeless state of confusion, hindrance, entanglement, and peril all things that are done in the Church have been brought by the pestilent, unlearned, and impious traditions of men." A full-blooded denunciation of the great Reformer—that is representative of much. I also thought that Jeremy Taylor's treatise "Dissuasive from Popery," volume 10, page 252, of Heber's edition of his works, in which he sums up that the effect of the Roman doctrine of dispensation is important. He says, referring to the Romanists: "They legitimate adulterous and incestuous marriages, and disannul lawful contracts; they give leave to a spouse to break his or her vow and promise, and to children to disobey their parents, and, perhaps, to break their mother's heart or to undo a family. No words can bind your faith, because you can be dispensed with; and if you swear you will not procure a dispensation, you can as well be dispensed with for that perjury as the other; and you cannot be tied so fast but the pope can unloose you. So that there is no certainty in your promise to God, or faith to men; in judicatories to magistrates, or in contracts with merchants; in the duty of children to their parents, or husbands to their wives, or wives to their contracted husbands; of a catholic to a heretic; and, last of all, a subject to his prince cannot be bound so strictly, but if the prince be not of the pope's persuasion, or be by him judged a tyrant, his subjects shall owe him no obedience." I would take leave to remind your Lordship that I adduce this, not to indicate my own opinion necessarily, but to indicate the position the Reformers took as to the pre-Reformation form of marriage. I would also refer to the preamble to 32 Henry VIII., chapter 38, which has a description of the mediæval system. *Marriages have been brought into such an uncertainty thereby, that no marriage could be so surely knit and bounden but it should lie in either of the parties' power and arbitrariness, casting away the fear of God, by means and compasses to prove a pre-contract, a kindred and alliance, or a carnal knowledge, to defeat the same, and so under the pretence of these allegations afore rehearsed, to live all the days of their lives in detestable adultery." The "First Book of Discipline," which Lord Guthrie will know very well—1560; "Because that marriage the blessed ordinance of God in this cursed papistry hath partly been condemned," and so on; and the Reformers make their changes.

22,544. Do you know from your studies what grounds for divorce were recognised by the Reformers?—I think I could answer that fairly by applying to two insular authorities, one the authority of the Westminster Confession, which in this matter reiterated the earlier Confession, and the document which I think is most important, the *Reformatio Legum*.

22,545. It was never put in force?—No, but it reproduced the views of the two key figures of the English Reformation, Archbishop Cranmer and Archbishop Parker, who re-issued it in 1571 when—

22,546. Where does the fact of that re-issue appear?—It is mentioned—

(Chairman.) Perhaps Sir Lewis Dibdin would ask you about this.

22,547. (Sir Lewis Dibdin.) Is there any statement in the preface that Archbishop Parker published it?—It was published by the sanction of Archbishop Parker; certainly with his approval.

22,548. Is there any statement about that?—I think there is no doubt about the fact.

(Chairman.) Would you kindly ask him about that after.

(Sir Lewis Dibdin.) Certainly.

22,549. (Chairman.) You were going to give us the Westminster Confession?—Yes. The Westminster Confession, chapter 24—"Of Marriage and Divorce." "Adultery or fornication committed after a contract, being detected before marriage, giveth just occasion to the innocent party to dissolve that contract. In the case of adultery after marriage it is lawful for the innocent party to sue out a divorce; and after the divorce to marry another, as if the offending party were dead. Although the corruption of man be such as is apt to study arguments, unduly to put asunder those whom God hath joined together in marriage; yet nothing but adultery, or such wilful desertion as can no way be remedied by the Church or civil magistrate, is cause sufficient of dissolving the bond of marriage." The two causes are there.

22,550. I do not think you need trouble to read us the *Reformatio*; we have a copy of that?—Perhaps Sir Lewis Dibdin would just like me to quote the actual sentence which refers—

22,551. We have that already, Mr. Henson. If you like to do it, by all means; but we have a translation?—I will not detain you then, my Lord.

22,552. Then perhaps we might resume your proof. I should like to ask you this first. The two insular instances that you refer to; I do not know whether you have any extract from anything that will help us?—I have no extracts here because I thought it was a matter of universal knowledge that the Lutheran Church had taken perhaps the widest or the laxest views of these matters of any of the Churches of Christ.

22,553. Do you recall what the grounds were?—I should hardly like, without reference to my books, to answer that.

22,554. I think we shall have that from another source. Then would you kindly resume?—"Before the Reformation no accusation was more constantly advanced against the Ecclesiastical Courts than that of venality, and perhaps no circumstance created more dislike of the clergy as an order than their association with a system of financial oppression, and obvious social inequality. These evils survived the Reformation. In England the method of obtaining divorces *a vinculo* by means of private Acts of Parliament was so costly as to appear the privilege of the wealthy. Perhaps the ignorance of the masses alone permitted the long continuance of a system so irrational in theory and so unequal in practice. Certainly the education of the people has made, first, its mitigation by the Act of 1857, and now its complete removal by some fresh legislation, unavoidable. An equal law, reasonably accessible to all classes, will imply a large increase in the number of divorces, but need not indicate any lowering of the general morality, and may even effect some moral improvement. Be the consequences, however, what they may, the final abolition of avoidable inequality must be a postulate of any reform of the marriage laws which shall be lasting."

22,555. Would you regard the extension of facilities for divorce; first of all, by the means of bringing the courts to such a state that the poorer classes could use them; and, secondly, giving some extended grounds (of course for grave causes) as likely to improve or not the general state of morality?—I should rather desire,

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my Lord, to be supposed to have my mind in balance on the latter part of your question. My particular point is rather that I desire to make it clear that in my view the Church no less than the State is able to approach a practical question (and a very difficult one) with an open mind.

22,556. Then might we proceed with the proof?—
 “The difficulty of correlating the civil and the ecclesiastical aspects of marriage arises from the circumstance that while the one possess universal importance and recognition, the other are ignored by a large proportion of the community. In the Middle Ages the normal strife of Church (*i.e.*, the Hierarchy) and State often turned on marriage questions, but in theory the ecclesiastical view of marriage had sub-merged every other. Since the Reformation the conflict has changed its form; and the tendency has been more and more to exalt the civil and depress the ecclesiastical aspect of the union. In England, where the Church’s control of marriage has never been complete, the final transference of this whole department of questions from the Church to the State, (which a series of statutes had seemed to imply), has been in a sense obstructed by the striking revival of self-assertion within the English Hierarchy during the last two generations. If it were the case that this revival had coincided with a corresponding change in lay opinion, its gravity would be less; but this is notoriously not the case. Among the laity of the different branches of the Christian Society, and certainly among those who are in communion with the Church of England, the widest diversity of opinion prevails with respect to the questions of marriage and divorce. Nowhere else, indeed, is the chronic dissidence of clergy and laity more manifest. Here it is to be feared that Lord Clarendon’s severe description of clergymen as ‘persons who understand the least and take the worst measure of human affairs of all mankind that can read and write,’ represents a widely-spread impression. It is important to remember that the proportion of English laity who are communicants, and who in that capacity naturally claim to be heard on ecclesiastical questions, is extremely small. Of the 6,156,441 electors in England and Wales it is certain that less than half a million are communicants in the National Church; and this circumstance, however unimportant in other connections, becomes gravely significant when a question affecting the entire community is in debate.”

22,557. Can you say where these figures come from?—I took them from the Registrar-General’s returns, which are quoted in Whitaker, of the electors. As to the communicants, the “Church’s Year Book,” I think, is the title of it. It is regularly published every year; a kind of official report of all finances and figures; and it gives the numbers in round numbers as 2½ millions. If in order to find the number of adult males you divide that by five, you will have rather a too favourable result; that would give 450,000 adult male communicants in the National Church, and by no means all of those are electors. I think that is a fact much to be reckoned with.

22,558. You have first compared the adult males with the electors?—Yes; and I take all the adult male communicants as also electors, which is by no means the case. I may say this is not a mere *jeu d’esprit* of mine. When I was Rural Dean in Essex some years ago I took considerable pains, in going round my parishes taking the Easter communicants, to find out the proportion of adult males; and I found one-eighth much nearer than one-fifth; but for the purpose of controversy I prefer to give the doubt to the side I am interested in, and so I give a fifth.

22,559. With regard to the diversity of opinion you refer to, would you just look back to the passage you have read. To what extent are you able to give us any information about that?—Well, my Lord, that is a question which wants very long answering to be answered satisfactorily, but I think such indications as this: I would take two crucial illustrations; the marriage of the innocent party in the divorce suit and the marriage of the deceased wife’s sister. Those are

two points which have been much in controversy. On those points the opinion of the English clergy, so far as it has been expressed by prominent individuals like their lordships the bishops, and in assemblies like the diocesan conferences, and so on, would appear to be distinctly hostile to both those unions; but if one tries to appreciate the opinion of the laity, whether you find it expressed in the House of Commons or in the House of Lords, or in the great leading lay journals of the day, you would find that the lay opinion is almost unanimously in favour of these unions. I draw an inference from that that the opinions of the laity and the clergy do not coincide on this point, and I am confirmed in that by another circumstance which perhaps your Lordship will allow me to mention, the fact that I am known to hold views not altogether in accordance with the majority of my clerical brethren, has led to my being the centre of a great many communications, some from people personally interested in these unions, and some from the clergy, and these communications have left on me a very strong conviction that it is only the official pressure from above that makes a great number of the clergy and a very great number of the Church laity abstain from expressing themselves openly with regard to these matters.

22,560. What was the reference to the House of Commons opinion?—I was thinking of the votes over the Deceased Wife’s Sister’s Bill. I see Sir William Anson is present, and no doubt his memory on that point is more trustworthy and authoritative than mine, but my recollection is that at the ultimate vote at the Third Reading there was a mere handful against it.

22,561. (*Sir William Anson.*) I do not think that can be taken as the expression of the opinion of the laity of the Church of England. The last House of Commons was very full of members of the Free Churches?—I think it was estimated that there were something over 200 Churchmen members of that House.

22,562. Oh yes?—And I think the total number of those that voted against the Third Reading was about 20 or a few over.

22,563. It was not large?—I should also like to call attention to another fact, though it is journeying to another point that will be raised, and that is, if we cross the border to Scotland, there the laity have a more unimpeded expression of opinion in these matters, and there on the question of the marriage of the deceased wife’s sister there was a vote recently in favour of it by an overwhelming majority, the effect of which is that that Church accepts the legislation on that point, and I have no reason for thinking that the lay opinion on the Scotch side of the border varies largely from the lay opinion on this.

22,564. (*Chairman.*) Have you the reference to that?—It appeared in the “Times” report of the General Assembly. It was a recent meeting.

22,565. I know, but have you the exact reference?—No, I have not the exact reference.

22,566. I gather from what you are saying that you would infer that lay opinion on the two points you have mentioned would not be in accordance—or a large proportion of it would not be in accordance—with such a strict view as we heard mentioned last week as to marriage being absolutely indissoluble?—I am quite sure; I have not the faintest doubt the opinion of the ordinary layman would not endorse the evidence that was given on that point.

22,567. Would you then kindly proceed with your proof?—“To some extent Anglican opinion has been formed in sheer ignorance and misconception of the actual situation in which the Church of England as an established Church legally stands, and which, it is safe to assert, cannot be seriously altered without bringing the relations of Church and State to a deadlock. It is one perilous consequence of educating the democracy, that opinion on matters of public interest can be rapidly created and easily concentrated without any adequate provision of the knowledge which alone could render such opinion sound. It is notorious that elaborate and persistent efforts have been made to popularise in Anglican circles a conception of establishment of which English

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"history knows nothing, and which the statute-book explicitly disallows."

29,568. What is that referring to?—I am referring to the series of popular histories of the English Church which have been published—two very conspicuous instances of which are by friends of mine, Mr. Wakeman and Mr. Hutton, which are the best examples I can mention of such books; and by the series of lectures issued by the "National Society for Church Defence and Church Instruction," I think. These lectures, which have been current all over the country, are, I think, endeavouring to popularise a conception of establishment which English history disowns. The key text, and perhaps the most illuminating illustration I can give, is the use made constantly in all kinds of Anglican pronouncements of the famous sentence "Sit Ecclesia Anglicana libera." This is supposed to indicate that the Church of England at that time had an independent, or a quasi-independent, existence, mainly with respect to the See of Rome. Of course I need not point out to your Lordship that the meaning of the words "Anglicana Ecclesia" in the 13th century was practically the order of the clergy resident in England. That order of the clergy was one solid thing throughout the west, and the freedom indicated by the word "libera" was the freedom amongst other privileges of unhindered access to the See of Rome—the gist of the whole thing. That is what it meant, and to use it as it is constantly used by the greatest people in the English Church, as though it indicated that kind of existence of the Church as a quasi-independent body, is, I am bound to say, a misreading of history altogether.

22,569. Then you proceed, "Thus it is actually contended"—?—The statute-book which I refer to, and would like of course to refer to specifically, would appear to be the two great Establishment Statutes; the one commonly known as the submission of the clergy, and the other, the Supremacy Act of Queen Elizabeth. Those two statutes are the foundation of the English State, and they disallow this conception of the quasi-independent existence of the English Church.

22,570. Have you got the reference to those statutes?—No, I thought they were too well known, but I can give the gist.

22,571. No, but I mean so that we can turn them up to get the exact reference?

22,572. (*Sir Lewis Dibdin.*) You mean 25 Henry VIII., chapter 19, and 1 Elizabeth I?—Exactly.

22,573. (*Chairman.*) Then will you proceed with your proof?—"Thus it is actually contended that in the canons the National Church possesses, not merely byelaws, but a legal code of its own, independent of, and superior to the law of the land. 'Canon law,' thus exalted into a co-ordinate legislation, is held to be incapable of abrogation save by the action of the provincial Convocations. The confusion of mind indicated by such opinions is unhappily not limited to a section of the clergy. It has infected the legislature itself with the most unfortunate effect. The recent Act legalising marriage with a deceased wife's sister actually contained a clause which drew a distinction between the clergy and the laity, leaving the former under an ecclesiastical law which for the latter was statutorily abrogated. The essential futility of the distinction has already been demonstrated in the case of *Bannister v. Thompson*. It is proper to observe that the marriage laws of England have consistently ignored and overridden the canon law. Thus to take but one famous example, Lord Hardwicke's Act of 1753 (26 Geo. II., c. 33) 'treated matrimonial contracts as absolute nullities, though they were celebrated with a regular religious ceremony, if certain legal requirements were wanting.' While thus ignorance has been the grand enabling condition of the new Anglican Ultramontanism, its unfailing stimulus has been drawn from controversy, as well the ancient and chronic religious controversy with the Church of Rome, as the more recent political controversy with the Nonconformist Churches. The Anglican seeks to demonstrate that his Church has lost nothing of its pre-Reformation liberty by repu-

diating submission to the Papacy, and that it is neither parliamentary in system nor Erastian in principle. He is the while entangled in a fallacy, for he tacitly transfers to an established Church attributes which belong only to the spiritual society itself. Little harm is done by his error so long as the controversy affects matters of small practical importance, but when it concerns the marriage laws the results are in the highest degree mischievous. Yet here more than elsewhere the confusion is most pardonable. For the toleration of divorce, and of re-marriage of divorced persons, is easily represented as implying disloyalty to the very first principle of Christianity—obedience to the Divine Founder—and as threatening the very essential character of the Church as a spiritual society. Thus a change in the marriage laws may stir the deepest religious resentments, and become the occasion of a formidable agitation in which the Christian conscience itself will be at the service of the agitators. In these circumstances it is not surprising that many persons should seek the solution of the practical problem in a complete separation of Church and State in the matter of marriage. Why not adopt the policy, recommended by Lord John Russell in 1836, of universal civil marriage, leaving the parties concerned to add any religious ceremony or ceremonies 'they may think proper'?"

22,574. I understood rather that was the suggestion made to us last week?—Yes, but the quotation is from Spencer Walpole's *Life*, my Lord. "It must be answered (1) that this arrangement would not touch the core of the difficulty so long as the Church of England is an Established Church, for how could it be tolerable that citizens who contracted marriages permitted by the law of the State should be excluded from Communion in the National Church as 'open and notorious evil livers' by the rule of the Church? The mere ceremony of marriage is a small part of the difficulty; the admission to those religious privileges, which by the system of the English establishment, are guaranteed under statutory conditions to all qualified parishioners, cannot be made dependent on the opinions of individual bishops, or even on the votes of the provincial Convocations; (2) that the definite and recognised repudiation of the Marriage Law of the State by the Church of England would, in the actual circumstances of the nation, be highly disadvantageous to public morality, tending, on the one hand, to stimulate an irrational severity among churchmen, and, on the other hand, to add force to those tendencies in modern society which are least friendly to the purity and permanence of the marriage union."

22,575. Would you kindly explain why you think it would add force to those tendencies you refer to there?—First, with regard to churchmen, I say the tendency would be to stimulate an irrational severity. It must be within the knowledge of the Commission that within the Church of England there are conflicting tendencies with regard to the degree of severity that the marriage law of Christ requires. If the Church were directly pitted against the State on this matter so that it was a point of honour to assert its law as against the marriage law of the State, I cannot doubt that that operation would stimulate the more severe and more exaggerated side of the Church claims.

22,576. Which are the two?—Roughly they correspond with the two great divisions of the Church of England into the Evangelical and the so-called Catholic party; but the view was presented ever since the Reformation—the 17th century notoriously by Bishop Burnet and Bishop Burnet's critics—and it has been represented very conspicuously in our own more recent times.

22,577. But can you state the two conflicting views as to marriage?—I think the best test would be on the re-marriage of the innocent divorced person. A large body in the Church holds that that is inadmissible, holding the sacramental theory of marriage as being indissoluble. A much larger body of opinion of the laity, and a very substantial body of the clergy holds on the contrary that marriage is dissoluble, at any rate

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for the cause of adultery; possibly also—on the authority of St. Paul—for the cause of desertion. That distinction, I think, is very well known. With regard to the influence on the State I would like to use the very strongest words I could find to express what I think would be a disaster to the nation. Our people—even the poorest of them—do wrap round the marriage contract with religious sanction; they think of it as a sacred thing, and it is really lowered in its meaning to them if they go to a registry office and not to church. I take that as a very valuable asset for the nation's morality, and if the Church ceased to be national, and went into the arena as a small sect and separated from marriage these religious sanctions, the effect would be rapidly to lower the whole conception of the union.

22,578. That is rather a different view to what we have had represented by some—that the poorer classes do not value the Church ceremony as anything, and the witnesses have advocated a mere formal but civil ceremony on that ground?—I am compelled to say that I differ entirely from that view, and I should like to offer as a little contributory indication of the way in which the poorer people are affected by these religious associations, the attitude of the poorer people with regard to the churching of women. Now nothing turns on that little service of the churching of women after childbirth; nothing in the way of birth certificates or anything except merely the solemn responsibility and the general sense of fitness; but the poorest people as a rule are most careful to see that after childbirth their wives come to church. I only mention that as it indicates the strength of those associations. Amongst the poor, to be married in the registry office is not considered respectable, and their respectability is a very weighty matter in their eyes.

22,579. I think we can revert to the proof again?—Consequences so grave ought not to be lightly incurred: at least the impossibility of a *modus vivendi* between Church and State ought to be clearly demonstrated before the ancient and salutary connection between them is destroyed in the interest of a rigid ecclesiastical theory; at least the foundations, theological and historical, of that theory ought to be rigorously examined before so great a weight is placed on them. If such an examination be attempted it will be found, that the absolute and uncompromising language now common in Anglican circles is not really warranted either by the scriptures by which it is commonly justified, or by ecclesiastical history which is assumed to require it. If reasonable weight be given to the change which has passed on thoughtful Christian understanding of the Bible, and if the witness of history be candidly appreciated, a situation is created which, though assuredly in some respects perplexing, does yet relieve the existing strain, and even permit the hope that with frankness, moderation, and good sense, the threatened alienation of the Christian religion from the national handling of marriage may be averted."

22,580. If it is not asking you too much, what would be your suggestion of another *modus vivendi*?—Well, my Lord, under correction, I think that question requires such careful answering that I rather shrink from attempting straight away to answer it; but I think the first preliminary is that the Church should not take up a *non-possumus* attitude. If I might put it in this way, I think a new situation has been created by the State by many circumstances in our time. I will give but two; the spread of education amongst our people makes it quite impossible to keep anything any more as a mystery within certain limited classes; sooner or later everything must be discussed *coram populo*, and must be so presented as to be on equal terms to everybody. On the other point there is a little illustration. I would take the question of desertion. Until recent times capital punishment was administered with extraordinary freedom. I think I have heard it stated that in the beginning of the 19th century two or three hundred capital sentences were on the code, that means that these capital sentences were inflicted for matters that are now punished by a long term of imprisonment. Does not that affect

the question of desertion? It has been submitted that long terms of imprisonment ought to be a ground for dissolution, and I only say that that is one indication of the kind of new situation that has been created. Now my argument is that the Church ought to be able to come to the consideration of this new situation with an open mind, always guided by certain great leading principles of the Christian religion, but not bound in advance of its history and experience by the specific law prohibiting it.

22,581. You mean the open mind would start with an indissoluble marriage, but recognise some ground —?—Yes. Are we to take *πορεία*—the one case mentioned in the Gospels as justifying a divorce, if we adopt the later reading of the Evangelist—are we to take that as a specific and final cause, or is it a representative cause, so that we might say the absolute indissolubility of the bond is not a Christian doctrine, and we may say that we have a kind of typical offence given to us in the gospel by which we can measure the kind of conditions that alone would justify on Christian principles the dissolution of the bond?

22,582. Of course it would be difficult to ask you to do it at a moment's notice, but you have sufficiently indicated the line of thought which I understand you wish to convey to us?—Yes.

22,583. Then you proceed with the proof?—"From the Christian point of view the existing marriage law is open to at least three grave objections: "1. *It is unequal as between the sexes.* In no respect is the teaching of the New Testament more original than in the emphasis it places on the equality of the sexes. This truth was obscured at the time by the inbred prejudices of the Apostles, by the tradition of the Rabbinic schools, by the habits of society, by the circumstances in which the gospel had to be applied to human life. The disastrous and profoundly degrading heresy of asceticism hindered for many centuries, and in the noblest Christian minds, the perception of it. There is indeed much in the New Testament which contradicts it, and there are obvious reasons why men should make the most of the apparent contradiction. None the less the Christian conscience has definitely outgrown these errors, and requires such a change of the law as will reflect the true equality of the sexes. The candid student of the New Testament finds here one of the paramount features of original Christianity; and the social historian perceives here the true contribution of the gospel to the purification and strengthening of the marriage relationship."

22,584. Then the second point?—"The whole conception of marriage is degraded by the assumption that the marriage bond is patient of perpetual voluntary separation between husband and wife. 'Judicial separation' is the modern form of the canonical divorce *a mensa et thoro*. The mediæval doctrine of a *vinculum* which is independent of the union of the parties has no basis in Christian principle, and is deeply mischievous in many directions. It underlies the clerical agitation against the marriage of divorced persons, even of the innocent parties, and confuses the minds of those sections of the people which are affected by clerical agitations. In the XXVth Article the Roman doctrine that marriage is a sacrament is explicitly repudiated. Burnet is right when he observes that 'if the opinion that marriage is a sacrament falls, the conceit of the absolute indissolubleness of marriage fall with it.'"

22,585. Have you the reference to that passage?—The reference is in his book on the Thirty-nine Articles. It is pages 374 to 378. The edition I am using is London, 1845, "A more rigid churchman than Burnet, Cosin, used similar language: 'Bed and board, or cohabitation, belong to the essence and substance of matrimony; which made Erasmus and Bishop Hall say that the distinction of these two from the bond is merely chimerical and fancy. The promise of constancy and mutual forbearance, if it hinders divorce as to the bond, hinders it also as to bed and board; because the same bed and the same table

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“ were promised in the marriage contract; but the
 “ promise does not extend even to tolerating adultery,
 “ or malicious desertion, which according to God’s
 “ ordinance dissolves the marriage. Our Saviour
 “ speaks of divorce instituted by the Mosiac law;
 “ but they were no other than divorces from the
 “ bond. The notion of a *vinculum* which is not
 “ destroyed by adultery itself, and which inheres in the
 “ relationship apart from its objects and conditions, is
 “ the creature of the ascetic imagination, and is (as
 “ indeed the early Church perceived) as inconsistent
 “ with second marriages as with marriage of the
 “ divorced. It will be sufficiently apparent that when
 “ the sacramental view of marriage is frankly abandoned,
 “ and the permanence of the marriage bond is seen to
 “ be contingent on conditions which may cease, there
 “ emerges the grave and difficult practical question as
 “ to the circumstances which shall be held to imply such
 “ a destruction of the marriage bond. All Christians
 “ hold that *death* destroys the bond; most Christians
 “ hold that *adultery* does so. Beyond that point there
 “ is less agreement; but most Protestant Christians
 “ agree in the principle that whatever can be shown to
 “ render impossible the primary objects of marriage is
 “ *prima facie* a sufficient ground for divorce. If it be
 “ rightly contended that there is nothing in the Gospels
 “ which can fairly be described as ‘a definite and
 “ detailed social law,’ and if it is not the case that
 “ Christ’s words with respect to marriage are in such
 “ sense ‘plain and direct’ as to close the question for
 “ His disciples, then it would seem to follow that the
 “ conditions of divorce are properly to be determined
 “ by the State in the light of Christian principle with
 “ reference to the actual necessities and circumstances
 “ of men. So long as the marriage law does not violate
 “ Christian principle it can claim from the Church
 “ respect and obedience.”

22,586. Would your view be, from the study of the Gospels, that they do contain any detailed definite law? —I do not think the Gospels do contain such a law. With the permission of your Lordship, I should like to read a small note I prepared on that point.

22,587. If you please?—“ It is admitted that the
 “ basis of the Christian ‘law’ of marriage is the
 “ teaching of Christ. That teaching is found in a few
 “ passages of the Synoptic Gospels. These passages,
 “ however, are not really either clear in meaning or
 “ harmonious in doctrine. If they be all accepted, and
 “ united into a single teaching, then Christ allowed
 “ that the marriage bond was for a sufficient cause
 “ dissoluble, and defined that cause by a word which,
 “ though apparently carrying an obvious meaning, has
 “ in point of fact been found very difficult to interpret.
 “ The reigning school of modern critics agree to give
 “ priority to the Gospel according to St. Mark, and to
 “ make it the criterion of the other synoptic narratives,
 “ wherever they cover the same ground. On this view,
 “ the actual declarations of Christ with respect to
 “ marriage and divorce are most accurately reported in
 “ St. Mark’s version. But this version omits the clause
 “ which allows divorce for adultery (*porneia*) and makes
 “ our Saviour assert the absolute indissolubleness of
 “ the marriage bond. The expressions in the Gospel
 “ according to St. Matthew which mitigate this severity
 “ are explained as later editions either of the compiler
 “ of that Gospel, or of some later scribe, importing into
 “ the text the actual rule of the Jewish-Christian
 “ churches. In this view all the most recent English
 “ commentators appear substantially to agree. Liberal
 “ critics like Burkitt, Bacon, Montefiore, and Allen, are
 “ here at one with more conservative scholars like
 “ Salmon, Swete and Plummer. This view is admitted
 “ even in quarters where criticism is not often wel-
 “ comed. I may refer to a monograph by an American
 “ scholar, Professor Tyson, on ‘The Teaching of Our
 “ Lord as to the Indissolubility of Marriage,’ and to
 “ an article on ‘The Biblical Teaching on Divorce’
 “ in a recent issue of *The Church Quarterly Review*,
 “ by the Rev. C. W. Emmet. It does not, however,
 “ seem to be perceived by those who are taking from
 “ the latest criticism of the New Testament an argu-
 “ ment for the rigid prohibition of divorce which
 “ marks the canon law of the West, that the true

“ significance of the facts may lie in the opposite
 “ direction. If a critical reading of the Synoptic
 “ Gospels compels the conclusion that Christ abso-
 “ lutely prohibited divorce, then the interpolation in
 “ St. Matthew’s Gospel, and the language of St. Paul
 “ in the 1st Epistle to the Corinthians must demon-
 “ strate that the Apostolic Church did not understand
 “ our Lord’s words to constitute a precise and per-
 “ petual enactment, but held themselves free to
 “ interpret them with a due regard to the actual
 “ circumstances of the Church. This conclusion is
 “ rendered immensely more probable by the notorious
 “ fact that the Apostolic and sub-Apostolic Church did
 “ not generally treat the precepts of the Gospels as
 “ more than declarations of principle. The attempt
 “ to make an exception in the case of Christ’s language
 “ with respect to marriage raises a question of the
 “ utmost difficulty. To admit the legitimacy of such
 “ an understanding of Christ’s absolute language as
 “ is implied by the interpolation in the first Synoptic
 “ Gospel is to admit that the Christian Church did
 “ not receive from its Divine Founder such ‘a definite
 “ and detailed social law’ as would destroy in advance
 “ of its history all liberty of action with respect to
 “ marriage. It must be added that no extension of
 “ the grounds of divorce, which did not imply a total
 “ disclaimer of the Christian ideal of marriage, can
 “ equal the gravity of that earliest departure from a
 “ literal obedience to the words of Christ, by which
 “ an union which He declared to be absolutely indis-
 “ soluble was rendered capable of dissolution.”

22,588. That really explains the view you are expressing. I think you might resume your proof now?—“ A grave outrage on Christian sentiment is
 “ inflicted by the right bestowed on the guilty party
 “ by the existing law to demand the blessing of the
 “ Church on marriage after divorce. This legal right
 “ to be married in the parish church, without any
 “ security for repentance and satisfaction, offends
 “ against fundamental Christian instincts; contradicts
 “ the very notion of moral discipline, and violates the
 “ spirit, even if it does not also break the letter, of the
 “ Rubrick which orders the exclusion from Holy
 “ Communion of ‘open and notorious evil livers.’
 “ Bishop Thirlwall utters the thought of every equit-
 “ able man when he says that ‘the legislature cannot
 “ ‘reasonably or consistently require the clergy, whom
 “ ‘it obliges to recognise the Scriptures as of supreme
 “ ‘authority, to act in contravention of that which
 “ ‘appears to them to be there plainly taught as the
 “ ‘commandment of Christ.’ If the ‘guilty parties’
 “ were totally excluded from marriage in the parish
 “ churches, and the right of the innocent party to
 “ marry with the Church’s blessing were conditioned
 “ by an option to decline to officiate conferred on the
 “ clergyman, the practical grievance which at present
 “ exists would be removed with a minimum of friction.
 “ In this connection, however, it is necessary to point
 “ out that the legislature in granting options either
 “ to officiate, or to refuse to officiate, ought to secure
 “ to the clergy full liberty to avail themselves of such
 “ options at their own unfettered discretion. It is
 “ surely indefensible that the clergy should be coerced
 “ by the bishops to use, or to refuse to use, the liberty
 “ which the law secures to them. The tyrannous
 “ spirit proper to the mediæval conception of the
 “ episcopal office has already found expression in the
 “ treatment of clergymen, who have exercised their
 “ legal right to decide for themselves what may be
 “ their duty with respect to the marriage of innocent
 “ divorced persons or of sisters-in-law. It may be the
 “ case that Bishop Wilberforce was legally right when
 “ he declared in the House of Lords, during the debate
 “ on the Divorce Bill in 1857, that the proposed law
 “ ‘did not affect the bishops’ and that if he knew of
 “ any clergyman coming to perform the ceremony of
 “ marriage in the case of a divorced person ‘he would
 “ ‘meet him at the door of the church with an in-
 “ ‘hibition and suspend him from his office,’ but it
 “ could not have been the intention of Parliament to
 “ set bishops above the law, or to mock the clergy
 “ with franchises which they would be unable to use.
 “ Whatever option is given to the clergy in any fresh

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" legislation must be effectively guarded against the unwarrantable action of the bishops, if it is to have any value. The marriage in church of a guilty person with the partner of his or her guilt is plainly intolerable, save where repentance and public satisfaction have preceded the ceremony."

22,589. What do you mean by "public satisfaction"?—Well, I do not know exactly; it would have to be defined by authority. In the 17th century or the early 18th century it was not unusual in the Church for the offending party to do penance publicly in church, wearing the white sheet according to the conventional model; but something would have to be devised to represent publicly that an *amende* is being made to the outrage on the Church.

22,590. But you would be against the marriage of two guilty parties with each other, except when there was some public repentance in satisfaction, but in favour of the innocent party?—Exactly.

22,591. And of the guilty persons not being absolutely restricted from anything else?—No; I intended to postulate two cases. In the case of the guilty parties I desire to prohibit the marriage in the Church—with regard to the case of the respondent and the co-respondent—in the public interests.

22,592. (Judge Tindal Atkinson.) Not in the Church merely, but altogether?—Altogether.

22,593. (Chairman.) Might I ask you, apart from any notion of a Scriptural character, or any ecclesiastical notion, what ground would you put that on?—I should ground it on the public interest. I think adultery is such a very grave offence against society itself that the State ought to take notice of it from that point of view, and I have made a quotation from Paley, if I might be allowed to read on.

22,594. Yes?—"Here the sole question is that of public interest, which is deeply wounded by anything which tends to facilitate adultery. The prospect of marriage after divorce may well have that effect. 'There is reason to fear,' wrote Paley, 'that adulterous connexions are often formed with the prospect of bringing them to this conclusion (marriage); at least, when the seducer has once captivated the affection of a married woman, he may avail himself of this tempting argument to subdue her scruples and complete his victory, and the legislature, as the business is managed at present, assists by its interposition the criminal design of the offenders, and confers a privilege where it ought to inflict a punishment.'"

22,595. Can you give me the reference?—It is in the seventh chapter in the third book of his *Moral Philosophy*: "Equity is offended when the right to marry is refused to an innocent wife or husband; but equity is no less offended when the guilty wife or husband is allowed to profit by their crime. If, as appears probable, the prohibition of marriage in these cases would stop one principal source of adulterous motive, the public welfare is deeply concerned in the matter."

22,596. Would you from your experience of life, apart from any doctrine at all, regard that prohibition as a really valuable check in an anticipation of any guilty connection?—I am disposed to think, myself, it would be a valuable thing. I will not mention specific cases in which you can see it would have prevented them, but I think in the course of years, when the fact became generally known and had sunk into people's minds, that the marriage of a co-respondent and respondent—that is to say, of the two guilty parties, was absolutely prohibited by law—I think it would have a very considerable effect on the general attitude of people of that kind towards one another in society, and I think its indirect effects in the course of time would be very valuable, and I am impressed very much by the fact that both (if I may trust the high authority of Edersheim) amongst the ancient Jews, and, as Sir Francis Jeune says in his article in the *Encyclopedia Britannica*, in modern France the law actually does this. I have the extracts here.

22,597. They do that in Scotland, that is the law?—I did not know that.

22,598. But we are told it is always put on one side because the law in Scotland is that marriage between the two parties named in the decree of the court cannot take place, but then it is always got rid of by putting one of the names in, and, I dare say, leaving the other unknown, or leaving it out altogether. So that you get a difference between law and practice. I wonder whether you would think a judge sitting to try the case of the two particular people, and not thinking of its general effect on the nation at large, might say, "Well I will give these two people a chance," and therefore might leave it out. It has been suggested that that is the explanation why the practice at the trial has come about?—Your Lordship will correct me, but I believe in the private Acts of Parliament it was put in the draft of these Bills that it was to be prohibited and always struck out.

22,599. Yes, the same sort of thing was represented there, the general matter of importance; but when you are dealing with the two people *ipso facto* the chance seems to be taken away of their righting their lives?—I should desire in any legislation of the future that no option should be possible of that kind. I think it is a matter of the greatest possible importance that adultery should be stigmatised as a grave social offence, and I think this would do it very conspicuously.

22,600. Then will you finish?—"The frequency of divorces will mainly depend on two circumstances, the number of causes for which divorce is granted and the facility with which marriages are contracted. Even in America, where the number of divorces is so great as to have become a grave public scandal, it is probably the latter circumstance quite as much as the former which lies at the root of the evil. There is room for improvement in this respect also in Great Britain. Publicity is not adequately secured by the arrangements for the publication at the registry offices. It needs no saying that the law with respect to residence has become practically inoperative in many places, where the population is in constant movement. This would matter little if other means for securing adequate publicity could be found."

22,601. Then you pass to another point?—"The publication of disgusting details of the Divorce Court should cease. In 1857, when the people were still largely unable to read and write, the full possibilities for mischief of such publication were unknown. Now that the elementary schools have created a vast reading public, it cannot be doubted that the reports of divorce trials form the most demoralising literature in circulation, and the most widely read by the masses."

(Chairman.) I think that is all the proof contains. Now I will leave the Commissioners to ask you upon it.

22,602. (Judge Tindal Atkinson.) Just one or two questions, Canon. Are you of opinion that the absence of the right of divorce would lead to immorality?—I think a quite rigid rule prohibiting all divorce would lead to the extensive condonation of adultery and a lowering of the moral standard in the community generally.

22,603. We have had evidence by the medical officer from Sheffield that the difficulty of getting divorce leads the party who is injured to leave the offending party and form an irregular union. Would you think that probably true?—I should think probably it is true.

22,604. If that be the case, can you suppose that our Saviour would have laid down a law the strict observance of which would lead to immorality?—I do not presume it to be possible He should have done so, and I think it conflicts with His general method of teaching to think He legislated on the matter at all, in the proper sense of the word.

22,605. There is one other question about publication. Has it occurred to you that publication may act as a deterrent?—I have no doubt that it does as far as the parties are concerned, and I should desire also that there should be some liberty of publication in the hands of the judge so that circumstances particularly disgraceful which ought to be pilloried before the public he might in his summing up or verdict call

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attention to. . . . But what I desire is that the disgusting details should not be circulated as freely as they are at present.

22,606. (*Sir Lewis Dibdin.*) Canon Henson, I gather the general drift of your evidence is really addressed to conflict with what we have called here the Rigorist view of divorce—the view that marriage is indissoluble altogether. You have had in your mind, I think, those who think that marriage is entirely indissoluble, and you have thrown your evidence in the form rather of combating that notion. That is so, is it not?—I dissent from that view, yes.

22,607. But there is a middle view, which incidentally you have had a good deal to say about, which I think has not had the bulk of your attention, that whilst divorce may be permissible because of adultery, that it should not be so on any other ground. I think your evidence is not directed to that so much as to what I call the Rigorist view?—I should not hold that middle view myself, though I call it much more reasonable than the Rigorist view.

22,608. But you go further than that?—Yes.

22,608a. Then, if I follow your evidence correctly, you are not very anxious to make precise proposals of how the law should be changed, but rather to plead for an open mind on the part of the Church of England towards the subject?—That is so.

22,609. Your evidence has covered a great deal of very interesting historical ground, and a great deal of it does not call for any question that suggests itself to me, but there are a few details I should like to ask you about. At the very beginning of your evidence you were asked by the Chairman as to what your view was as to the relative state of public morals at the date when the Divorce Act came into operation, and now, the object being to bring out your view as to whether, in fact, the Divorce Act in operation had worked well or badly upon public morals?—Yes.

22,610. And you gave a series of extracts showing a very lamentable state of things in English history, but I noticed they stopped at Dr. Johnson. Do your extracts go so far as to embrace that condition up to just before the Divorce Act?—No, I thought it was not necessary to elaborate evidence before the 19th century, because I thought the discussions on the Divorce Act would be sufficient. I thought the other was very interesting, but as to the later period it is, of course, more recent.

22,611. Have you formed any view as to whether on the whole from your reading (neither you nor I can remember quite that time), in the classes where divorce has taken place—amongst whom the divorce law has really been operative—things are better or worse than in the early Victorian period?—I should hesitate to give an opinion, but I think in answer to your question I would admit that we are at present witnessing what I call in my evidence a marked moral deterioration in some sections of society. I think that that phenomenon has not been any more unfamiliar in the past than it is to-day. I attribute it to the very rapid acquisition of wealth in certain sections, and many conditions of modern life. In America and England—I will not say the Continent—we are witnessing that, and I desire to strike a note of warning that we should not be unduly influenced by the fact—grave in itself, but not as grave as many think.

22,612. You think it may be possibly due to many causes?—Yes.

22,613. Do you think one cause may be the sense of loosening of the marriage tie that has taken place in consequence of the Divorce Act?—It is possible it may be, but I do not think “loosening of the marriage tie” is a phrase that can be fairly used in connection with this country. In America there are certain circumstances that make it very fair to use that phrase.

22,614. Well, the feeling that is amongst the wealthier classes, which certainly was not I suppose 60 years ago, that if any particular marriage is a failure they can probably get out of it through the Divorce Court?—Well, of course it is quite possible it may be so, but I have not the materials really to form a judgment.

22,615. I do not quite follow your historical statement. As I read your evidence, your view is, that up to the Reformation, owing to what you call the mediæval view that marriage was a sacrament, of course marriage was indissoluble, and the evils you have told us followed; but on the Reformation that view of marriage being a sacrament being given up and abrogated, divorce was at once introduced. My questions have to do with England, and not with the Continent. I do not quite follow what you are referring to in history as to England?—Well, Sir Lewis, as you know, the process of the English Reformation was at that particular point of the dealing with the old Canon law curiously arrested by the course of events and the action of the clergy. But the result was that the *Reformatio Legum* may be accepted as the draft of what was intended by the leaders of the Reformation, but it never became more than a draft, and the Church of England, so to say, accidentally passed into history with the mediæval condition in that particular perpetuated; hence the singular device of private Acts of Parliament which had to be had recourse to to meet the condition that followed.

22,616. When do they begin?—I am not sure if Lord Northampton's divorce in Edward VI.'s reign was by Act of Parliament.

22,617. No, that was not by Act of Parliament. It confirmed the divorce?—It was a strange anomalous proceeding.

22,618. Apart from Lord Northampton's case, which I will ask you some questions about, and which I think you will agree was a special case, the process of divorce by Act of Parliament did not really begin until the 17th century?—That is true.

22,619. I am coming to the *Reformatio Legum* directly. With regard to the arrested reform of Canon law and so on, can you tell me—you have quoted Luther and the continental reformers—from your reading of the English reformers what their view about divorce was, or was there any consistent view?—I think they were very much divided in their minds. We must always remember, in considering the act of the Reformers, that the first generation of them had been trained in the mediæval system, and they were dominated by traditions which they were gradually shaking off; but as to the English divines there certainly have been two opinions; for instance, take the position of Bishop Hall—

22,620. But I want it a great deal earlier. I want the middle of the 16th century?—I am afraid I should have to say there that the weightiest indication of their real mind that we have in England is the *Reformatio Legum* which represented the opinion of a Committee of Divines, and notably of Cranmer himself, and Cranmer had a very strong view about marriage. You remember his vehement protest against the lax proceedings in Germany on the point of marriage.

22,621. I would ask you to lay aside the *Reformatio* for a moment, and tell me, if you can, what you know of any of the Reformers in the mid-16th century who expressed a view in favour of divorce for any other cause but adultery. You remember Bishop Hooper's celebrated treatise which he got into great hot water for writing, but he restricts it to adultery?—Yes, of course the Reformers mostly dealt with the question in connection with the Roman controversy. They were resisting the Tridentine doctrine that marriage was a sacrament.

22,622. But the Tridentine decree had not been made then?—Oh yes, the Tridentine decree was made about 1560.

22,623. Yes, but Hooper was burnt before that?—Yes, but I was about to mention Jewell. Hooper would hardly be the weightiest name one would mention.

22,624. I mention it because I want you to tell me; I am not myself aware of any of the mid-16th century Reformers who carried divorce further than for adultery with one exception, and I thought your reading, which is much greater than mine, would assist me?—I should sum up my impression of my reading of the period in this way. I do not think the Reformers went beyond the scriptural argument, and they seem to confine that to divorce for adultery, or

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divorce for adultery plus desertion; because I think they regarded St. Paul's teaching as going as far as that.

22,625. Can you tell me any Reformer that took that view?—No, I cannot at this moment, but I think generally that is about the position that they reached in the 16th century.

22,626. The exception in my mind is Tyndale?—Yes.

22,627. You will find he says distinctly divorce should be allowed for desertion?—Yes.

(Chairman.) What is the reference to that?

(Sir Lewis Dibden.) Tyndale's Expositions. I will give it to your Lordship. It is Parker Society Series, 51, 52, 54, 55.

22,628. About the Reformatio, you are quite clear that it really did represent the view of the Reformers at the time it was made?—My statement was that it represented the view of the two key figures Cranmer and Parker. I think we may be sure that it did that. I say, "The mind of the English Reformers is expressed in the abortive Reformatio Ecclesiasticarum drawn up in the reign of Edward VI. by a committee of divines, revised by Archbishop Parker in 1571. 'It represents the state and condition of the Church of England in the reign of Queen Elizabeth, when the Reformation may be said to have been completed.'" I quoted a book there. I am not sure that I can go as far as that myself; but it certainly does represent the opinion of the two key figures.

22,629. First of all I should like to ask you, have we got the Reformatio Legum at all. What have we got?—Well, there is a learned discussion of the various texts and so on.

22,630. But you know, Canon Henson, very well, am I right in saying there is one manuscript which represents the draft which undoubtedly Cranmer worked upon?—Yes.

22,631. And it has marginal notes by Archbishop Parker?—Yes.

22,632. But whether the draft was ever passed by any commission at all we do not know?—No, I believe that is so, but the reason why I particularly limited myself to these two key figures was because I think the evidence does show that the Reformatio Legum represents the view of Cranmer and Parker.

22,633. Why do you say it represents the view of Parker?—Well, because Parker undoubtedly annotated the thing, and it is issued in 1571, and that is no ordinary year. It was the year in which the Articles were put forth, and when one realises the circumstances of the whole of the ecclesiastical situation in England it is to my mind unthinkable that that Reformatio Legum should be published apart from Parker.

22,634. You know Dr. Cardwell's critical edition of the Reformatio?—Yes.

22,635. And you will probably remember he says that we are not justified in connecting Parker with the Reformatio, and that we do not know what his attitude towards it was?—We are not entitled to connect him officially, that is true; but we are entitled to form a judgment on the situation from it; and my judgment for what it is worth —

22,636. May I suggest another consideration; 1571 was the date of the Canons of 1571?—Yes.

22,637. Some of the Canons of 1571 deal with the same subjects as the Reformatio Legum, do they not?—Yes.

22,638. And deal with it quite differently?—Yes.

22,639. Absolutely differently?—Yes.

22,640. Archbishop Parker was certainly responsible for the Canons of 1571?—Yes.

22,641. Does not that look as though he cannot have quite submitted to the Reformatio, though published in the same year?—I think it is true that the Reformatio Legum can only be regarded as a draft; opinions must differ as to what it represents. I think it represents what these key figures thought was desirable. There is no doubt it did not represent their official opinion, which, as you say justly, must be gathered by official acts put forward.

22,642. And we must add this, that though it was brought forward, and the scheme was tried to be brought

into operation in Edward's reign, it failed?—I do not quite know why it failed.

22,643. Yes, but it did fail?—Yes.

22,644. And it failed again in Elizabeth's reign?—Yes, again for very odd reasons.

22,645. And it failed in Henry's reign?—In Henry's reign the committee was never appointed.

22,646. Are you sure of that?—Well, it never got to work.

22,647. Are you sure?—I do not think it was appointed, but at any rate it never got to work.

22,648. Are you not aware that the very draft you speak of is headed by a letter in the name of Henry VIII. promulgating the Reformatio which he refused to sign?—Well, I think I have forgotten that.

22,649. But the only point I want to put to you is that although legislation was contemplated in three different reigns on the footing of the Reformatio it never took place?—That is true, but we have got a little from the point. The point is, how are we to get at the mind of the English Reformers. I quite admit we have a great paucity of evidence here, but the exceptional importance of the Reformatio Legum comes from the fact that it is one of the few cases in which we have a document undoubtedly by English Reformers in which they sketch more or less what they thought ought to be done.

22,650. You have said what you think about Cranmer's connection with it, but is it not much more certain that it emanated from continental Reformers—Martyr and Bucer, and so on?—Undoubtedly.

22,651. Was not Bucer one of the three that signed the continental opinion allowing Philip of Hesse to commit bigamy?—No doubt a great number of divines signed that execrable document and Cranmer protested against it.

22,652. I thought it was Luther, Bucer, and Melancthon?—No, I think there were more.

22,653. Does not that give rather a special atmosphere to Bucer's view?—I think the Lutherans of that time were taking an unduly lax view, but I think you belittle unduly the value of this document. I think its historic value as indicating the mind of the English Reformers is greater than you think.

22,654. No, I think it is of very great value, but I am surprised to hear it referred to as being an indication of the opinion of the Church of England at that day?—It could hardly have been published if it were not.

22,655. I do not want to weary you with historical details, but is not your real standpoint set out in the tenth page of your proof, where you say it would seem to follow that the conditions of divorce are properly to be determined by the State in the light of Christian principles in reference to the actual necessities and circumstances of man? That I take it summarises your view?—I think it might serve to do so.

22,656. That the State is to deal with the marriage law and not the Church, but that it is to be dealt with in accordance with Christian principle; who is to settle what is Christian principle?—Well, Sir Lewis, that is a very leading question indeed. I should say we cannot take a short cut to the answer. We have the text, we have the Christian documents, and we have to interpret them, and the weightiest interpretation of those documents is the doctrine and practice of the Christian society, and we must not limit our version of the Christian society to a part of it, nor draw our conclusion from one particular age, but attempt to correlate a verdict from a very large number of facts. In forming a conclusion as to that, I think I should have to take a good deal of time in determining.

22,657. No, I think it would be presumption if I asked you what your own view of Christian principle was; but what I wanted to get for practical purposes is this—you are here as a clergyman—what is to guide the Church of England as to what is Christian principle?—Well, again I should say that the Church of England must be guided; there are the documents, and there is the interpretation of the documents, and in arriving at that interpretation you have the practice of the Christian society.

22,658. But you have shown us by what you say how great a variety of interpretation is possible, and it

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is obvious it cannot be left to any individual judgment. What is to guide the Church of England as to Christian principle? What is it that settles it—that settles the view of the Church of England as to Christian principle?—Well, I understand this Commission represents a consciousness that the situation is not satisfactory and we are proposing to consider—

22,659. No, I am not dealing with what the State should do, but you are here as a representative clergyman, and I am asking you what, having regard to your statement, the Church of England is to regard as Christian principle?—At this moment, of course, existing law holds the field.

22,660. Is that the test—what an Act of Parliament says? Is that the test of what is Christian principle?—I think I have in one place drawn a distinction which has a very great importance. It is a distinction between two aspects or characters of the Church of England. I say that the Church of England is both a part of the Christian society and also an established national church. Now as part of the Christian society the Church of England is bound by the principles of the Gospel—that is of course the declared will of the Divine Founder of the Christian society, and as an established national church the Church of England is bound by the national law governed by the national authority. I would say that it is on a correlation of these two characters that our difficulties emerge.

22,661. And supposing they collide?—Then there can be no question as to a Christian man; it is for him to follow the society as against the established Church. But my whole appeal is before we assume any collision we should be very careful in the interests of the State to see that a collision is really necessary.

22,662. I know it is your view, but we must get it down to the concrete. I gather your view is that the view of the Christian society—the obligation of the Christian society—must prevail over the obligation of an established body, and I should have been very much surprised if you had said anything else. But my question is narrowed down to this. What in the view of the Christian society is the test of Christian principle?—Well, I answer that we have two authorities. We have primarily the Christian documents, and then the interpretation that the Christian society has put on them. Now my quarrel with my clerical brethren is that in applying the second test they limit Christian society to a part of it. Let me illustrate it in this way. You know, Sir Lewis, and we have all seen, that there has been a great deal of discussion over the matter of the Deceased Wife's Sister Act; appeal has been made to these two things, the documents and the Christian Church; but the Christian Church has been so unduly limited. Only the other day the Established Church of Scotland came to a vote the broad effect of which is that that Church accepts the said law of marriage, and I say that is germane to what the Christian society determines is a Christian law in that respect; but the appeal is made solely to the Eastern Church or the Western Church, and so on.

22,663. Yes, I quite follow what you say as a matter of individual opinion, but I still want to know what body, if there is such a body, in your opinion now representing the Church of England has any right to say what is according to Christian principle?—I do not know of any body that has the right to say that.

22,664. Would you say Convocation has?—No, certainly not.

22,665. You recognise some rights, I suppose, in Convocation?—Certainly.

22,666. If you will allow me to say so, you are a distinguished member of the body, but you do not think they have any right to indicate what is the view of the Church of England as to Christian principle?—I think not obviously, if I might stop you at that point. The Church of England submitted to the Supremacy Act of Elizabeth, and the Supremacy Act of Elizabeth, as you know, contains a definition of heresy. It defines it as being that which is concluded by the first four general councils, or any other general council, and that which is determined by Parliament with the assent of Convocation. Now *a fortiori* if

that is the view of the Church of England with regard to matters of doctrine, I must conclude it is the view of the Church of England with regard to matters of moral discipline.

22,667. But you are going back now on the establishment side of the Church. I thought you had made clear your own admirable distinction between the two aspects of the Church as an established body and as a Christian society. Having got that far I have thrown aside the establishment aspect of it, and I am asking you what in your view is the proper exponent of Christian principle in the Christian society?—But your question was what body existed to say what was the Christian principle, and I thought you were dealing with the actual situation.

22,668. What body exists which will in the name of the Christian society inform us what is the Christian principle?—Then I am frankly unaware of any body which can speak with the full authority of the Christian society.

22,669. Any body?—There are many bodies that can speak with authority as to particular sections, but we have not, as an established Church, such a body, because we are tied to that definition in the Supremacy Act.

22,670. Be it so. I accept your answer, and you say that is so, but it makes it impossible to apply your own definition that the conditions of divorce must be determined by the State in the light of Christian principle—I mean from the point of view of the Church as a spiritual society?—I think not, Sir Lewis. It makes it very difficult for us as a Christian Church acting as a Christian society to be able to speak in this way; but there is this distinction between the established Church and the Christian society; though it is fundamentally true it is a distinction unknown in history, and we have no organisation as a Christian society in the Church of England. Our only organisation is that of an established Church.

22,671. I suppose there are some limits that you would recognise within which, if the law acted, the Church of England could not accept?—Certainly.

22,672. Let us take polygamy; let us take a good rough instance which is quite clear. Supposing the State adopted the view of Luther, Bucer, and Melancthon which they thought had better be kept secret—and perhaps wisely—and the legislature allowed polygamy, what would your view be of the Church of England then?—I think undoubtedly to repudiate such an action of the State.

22,673. Why?—Because of the general conscience of the Christian society—not one section of it, but generally, which has expressed clearly its mind, and has made the point too clear to be mistaken. But I would point out this. I think I recognise in what you said a desire to score off the foreign Reformers—

22,674. I assure you—?—I would like to point out this, that they were only too faithful in following the practice of the mediæval Church in allowing bigamy.

22,675. I assure you I did not desire to do anything of the kind, nor do I hold a brief for the mediæval Church. I do not quite follow what is your view as to the laity. You gave us some interesting figures and you face the position that the clergy do not as a rule take your view on this subject?—They do not. Many more do than they dare say.

22,676. (Chairman.) I did not hear that?—Many more clergy take the view that I take than dare say they do.

22,677. (Sir Lewis Dibdin.) But as far as they dare express their opinion it is more the other way?—Yes, naturally. An expression of opinion—

22,678. With regard to the laity you say the position is very different, and you give us statistics as to the number of communicants, from which I gather you would still be in the minority as far as the communicants were concerned, but might or might not in regard to the whole body of laity?—I should not admit I should be in the minority of the communicants; on the contrary, I am perfectly persuaded that the mass of communicants in England would not sustain the rigid view advocated by the clergy.

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22,679. Then I did not follow your point on the comparison of the numbers of communicants with the number of lay electors?—The point was in dealing with the question not only of Church people as such, but the whole community, and we have to remember that the proportion of the laity which comes under the description of communicants is extremely small.

22,680. Perhaps I am wrong, but I gather that you are there talking of the opinion of the Church of England, are you not? Is it not in that context?—The Church of England is not to be limited to the number of male communicants.

22,681. Yes, that is what I thought you meant. What body does exist practically that in your view expresses lay opinion in the Church of England?—I think the House of Commons expresses it much better than any other body. It has some obvious defects which are sufficiently notorious, but the House of Commons represents the opinion of the English laity more than any body I know.

22,682. Would you say it expressed the view adequately of communicant members of the Church of England?—On some questions, certainly.

22,683. But on this question?—On this question I think the view of the House of Commons is more representative of the communicants of the Church of England than the view represented, shall I say, by the House of Laymen, from which I understand you, Sir Lewis, have retired.

22,684. Forgive me saying that is not a relevant fact. You speak of the House of Laymen, I suppose I may take it from that that you do not think the House of Laymen would sympathise with your view?—I think they have already voted on some of these points, have they not?

22,685. I think they have, very strongly against you?—My observation is that the House of Laymen, as far as I think the vote represents their mind generally, represents the ultra-clerical view.

22,686. I do not know why they should, but what I want to ask you is whether they are not practically the only bodies in England of the communicant laymen of the Church of England that can express an opinion. However bad or unrepresentative, is there any other body?—Though it is true what you say, there is no other body representing the communicant laity, it is also true that the conditions under which their body is appointed are such that it is impossible—if anybody knows the conditions of life in this country—to accept them as being representative. The communicant laity whose opinion we want to get are the resident laity in the parishes, and we do not get those there. I made a suggestion some time ago that we should get a representation—

22,687. Will you forgive me? If I ask any more about the House of Laymen, Lord Gorell will pull me up. I do not think it has much to do with our inquiry. I should be very pleased to ask you questions on the constitution of the House of Laymen, but I do not think it would be considered very relevant. I did not understand what you meant by the marriage laws of England having consistently ignored and overridden the Canon law. You mean by that the Canon law obtaining in the Church of England since the Reformation?—I was explaining my view there far back before the Reformation. I was desiring that the laws of England should be understood for the period before.

22,688. But you speak about Lord Hardwicke's Act?—I said, "to take one famous example."

22,689. I thought that was an example of the Statute law overriding the Canon law?—I wanted to lead up by that reference to the adoption of Dr. Maitland's position as against Dr. Stubbs.

22,690. You gave that as an illustration of how the marriage laws, or the statutes, override the Canon law?—I wanted to make out that it is no new thing in England that the State should decide questions of marriage, and that the Church has not been able to insist in England, whether before or after the Reformation, upon this Divine law expressed in the Canon.

22,691. I agree with you, but that is not quite the point. I suggest to you that the attitude of the statute law up to this time has been that of handing

over to the Church of England the carriage of marriage questions—until the Divorce Act and the Deceased Wife's Sister Act—and that it would not be in the least accurate to say that the Statute law had overridden Canon law, but rather that it had used the Canon law?—But how would you explain that in connection with Lord Hardwicke's Act?

22,692. Let me ask you a question about Lord Hardwicke's Act. What, in your view, did Lord Hardwicke's Act do?—Well, the language which I quoted I think points out one very important thing. "Lord Hardwicke's Act treated matrimonial contracts as absolute nullities, though they were celebrated with a regular religious ceremony, if certain legal requirements were wanting."

22,693. May I say that is a very odd way of describing Lord Hardwicke's Act. Lord Hardwicke's Act is the Act that stopped civil marriages without any religious ceremony, and required that a religious ceremony must in all cases be held following banns?—That is true, but it also disallowed marriages which the Church law undoubtedly regarded as valid, though many canons attempted to restrain disorder connected with it; marriages between minors under the age of 21 for instance, and marriages which were celebrated elsewhere than in church. Lord Hardwicke's Act was extensively opposed at the time by the strict advocates of the Canonical system.

22,694. But is not the point of Lord Hardwicke's Act that the use of the Church of England—having the service in the Church after banns—be an absolutely *sine qua non* for the first time?—No doubt.

22,695. That is not overriding, but using the Church for State purposes?—It is a question of definition. There were marriages in the Canon law said to be valid, but which, when Lord Hardwicke's Act was passed, were said to be null and void. That is overriding, though, as you say, it is using the Church of England to an extent.

22,696. Now, here we are with a practical business before us. I realise your reluctance to come down to absolute proposals, but what is your view of the principles of divorce? What ought to be the principle that governs divorce apart from specific proposals? I will not bother you with those; what is the principle?—I indicated that, I think, where I said in my proof—

22,697. Put it in your own words without the proof?—Well, I should say primarily that where a situation is created in which the fundamental objects and purposes of the marriage law cannot be fulfilled, that that is *prima facie* a ground of divorce.

22,698. If the contract has been broken in a fundamental particular that it ought to be dissoluble?—Well, I should say that it is a *prima facie* case for considering whether it is dissoluble then. I put it in that cautious and circuitous way because we must always remember that apart from the relationship of the two individuals there is the civic, or social aspect, which must not be let slip, and I can imagine circumstances where you would say, in dealing with individuals, that it ought to be dissolved, whereas when you consider the effect on the community you would think it ought not to be.

22,699. Then I want to put what I think you will agree is a fundamental part of the marriage bond; that is, that the parties should love one another. Supposing they have ceased to love one another and are certain of it, and that is proved to the satisfaction of any tribunal, is that a ground?—Certainly not, because the Church's attitude is that you ought to love one another, and that your loveless condition is quite within your own power to remedy.

22,700. Yes; but you ought not to desert one another, or commit adultery, or do any of the acts which are causes of divorce. But supposing it is satisfactorily proved that both parties are certain they have ceased to love one another, and the court is satisfied that they do not love one another, and they want a divorce, I want to know why they are not to have it on your principle?—I demur to your advancing it as *in pari materia*—the case of adultery and ceasing to love.

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22,701. They are each part of the marriage bond?—Adultery implies an act of a definitive and fatal character.

22,702. That goes to proof, but not to fact. It may be easier to prove adultery?—But it leads to the conclusion that your parallel is a false one.

22,703. Why?—Because there is the salient fact in the one that is not present in the other case. The salient fact is that adultery implies a provable act.

22,704. But difficulty of proof cannot, go to the bottom of the principle of the thing, can it?—I may be very stupid; I am only a theologian, and you are a lawyer. I should have thought the difference in those two situations is apparent.

22,705. Is that the only answer you can give me?—Yes.

22,706. (*Lord Guthrie.*) Canon, the title of your book is "Christian Marriage"?—Yes.

22,707. And I understand you give your evidence here from the same point of view, namely, what it is possible for Christians to prove?—Yes, Lord Guthrie.

22,708. We have had in the witness-box many witnesses belonging to different Churches who were asked about the New Testament, who have said they have nothing to do with that. That is not a view you can at all agree with?—Would you mind repeating that?

22,709. We have had in the witness-box a number of witnesses belonging to different Churches who have given evidence on questions of public policy, and when cross-examined as to whether these are reconcilable with the New Testament, they have said they have nothing to do with it?—That would be an impossible position for a Christian clergyman.

22,710. Or for a Christian layman?—Yes, quite; for a Christian at all.

22,711. That is to say, if Christ clearly enacted, for all time and for all circumstances, absolute indissolubility of the marriage tie without any exception, you would say that every Christian, whether clergyman or layman, must follow that?—Unquestionably.

22,712. You know the matters in connection with which this Commission was appointed. Now just tell me whether, in your view, any of them are consistent with Christ's teaching. First, the proposal that men and women should be put on an equality?—I think that is required by Christian principle.

22,713. Secondly, the proposal that the poor should have the remedy of divorce open to them which is at present confined practically to the well-to-do?—I think that follows obviously.

22,714. Thirdly, the proposal that indecent details should be excluded from the reading of the ordinary people?—Certainly.

22,715. Fourthly, the suggestion that there may be grounds for divorce other than adultery which should be made matters for divorce by the State?—I think that is a matter which may fairly be discussed as legitimate within the lines of Christian principle.

22,716. You were asked as to the definition of matters that would be grounds for divorce as being something that transgressed the fundamental condition of the contract. There is another way of putting it. It is something that makes the continuance of the marriage tie reasonably impossible; what do you say to that?—I think I should not be disposed to draw a very sharp distinction, such a definition as the one I describe.

22,717. Take the case of a couple having ceased to love one another. That does not make the continuance of the marriage tie reasonably impossible, does it?—Certainly not. I should have thought that was there distinctly a case in which the Church's only possible attitude towards them would be one of exhortation.

22,718. Self-respecting people may still continue to live together for each other's sake and the sake of the children?—Certainly. They cannot point to any circumstance that makes it reasonably impossible to cohabit. There is no danger to life; there is no danger to limb; there is no danger to health.

22,719. Do you think that is comparable to adultery in any point of view whatever?—It seems to me emphatically not so.

22,720. Do you think it is comparable to outrageous cruelty?—Cruelty must be defined.

22,721. Well, supposing it is outrageous cruelty?—Outrageous cruelty seems to stand in a different category, because outrageous cruelty would run to the point of danger to life and limb.

22,722. Do you think it is comparable to habitual drunkenness?—If by habitual drunkenness be indicated a practical state of continuous intemperance which is incurable, which competent authorities can say is incurable, I think again you cannot put that on the principle of ceasing to love one another.

22,723. Do you think it is comparable to a case of one spouse deserting and finally repudiating the marriage bond, and who has left his wife and children finally?—I think that is what I should call wilful desertion, and I should say wilful desertion is a ground for divorce on Christian principle.

22,724. And there it is not only a matter of not being reasonably possible, but it is absolutely impossible to continue the marriage tie?—Certainly.

22,725. Do you see any reason why the Church of England, or any Church, should not meet the State on these questions, and meet the proposals made?—I think it is most highly desirable that the Church should, if possible, join with the State as to how best the marriage law should be revised, if revised it is to be. I cannot imagine that the State, if I may personify something that only means the sum of the reasonable citizens, could think it wise to ignore the great volume of thought and practice of moral teaching which the Christian Church represents; and to put it no higher, the Christian Church (I use the word in its widest sense), the great mass of self-regarding, self-respecting citizens—it would be a tremendous disaster if the great mass of self-respecting citizens were hostile to the State. Nothing could weaken the authority of the State in the citizen's eyes so much.

22,726. Now as to the Church of England. You attach importance to the continuance of the connection between Church and State?—Decidedly.

22,727. And I suppose you would deprecate very much the narrowing of the possible membership of the national Church?—I think it would be a great disaster to narrow the membership of the national Church.

22,728. And if the Church takes the view that it will not accept any, or all, of these proposals that I have mentioned, and will exclude from its membership persons who take advantage of them, you would think that a national misfortune?—I think it would inevitably entail disestablishment.

22,729. Which you would think a national misfortune?—Yes.

22,730. Those who are ready and waiting for disestablishment should not have that condition opened to them?—I should suppose not.

22,731. You know, Canon, we have had opinion here in favour of repealing the Act of 1857 on the ground that marriage is indissoluble. I suppose it would necessarily follow from that, if the legislature did so, that it could not pass any private Acts of Parliament logically?—Logically certainly not, but experience would indicate that logic counts for very little.

22,732. Supposing that were the result, would the position be to leave England absolutely alone amongst all the countries that you know of?—I am not aware of any civilised country the laws of which absolutely, and in that complete way, prohibit divorce.

22,733. In every age, and in every society, has there either been divorce or a substitute for it by way of subterfuge, as in the Roman Church?—Well, Lord Guthrie, I think I offered some evidence just now in order to show that in my view it is not an unfair thing to say that, looking back on the history of Christendom, divorce has always been a factor, either by name or as a fact, in the societies of Christendom.

22,734. No person has proposed to us if divorce were made impossible to bring in any of those subterfuges, so that the people of England would be left in a more curious position than has ever been known in history?—I think it is an unthinkable position that you indicate. I do not think it could be acquiesced in for a moment.

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22,735. Supposing the State did some of the things I have been mentioning and the Church of England held out against them, would the Church of England have a companion in any Church in the world?—The Church of England would be in the most absurd position possible, because the Church of England has not within itself any power or has no power at present—of dispensation (Sir Lewis will correct me if I am wrong) to do what was absolutely necessary to have done in the Middle Ages. It has no dispensational power. In the Middle Ages the *corpus juris canonici*—the great mass of canonical legislation presumed to be catholic—had authority in the local courts, and only one authority could dispense from that supreme jurisprudence, and that was the Pontiff of Rome. If that was so, we should have to begin by developing the dispensing power to do for ourselves what was done for us by the Pope, or, to put it in another way, Parliament has been doing for us what the Pope did before the Reformation. It has been our dispensing power, and on the whole I greatly prefer it.

22,736. Then it comes to this, that if the Church of England took the position I am suggesting, it would not be merely separating itself from the Eastern Church and all the other Protestant Churches in the world, but it would be unable to afford its members the facilities the Roman Church does, and therefore would stand absolutely alone in Christendom?—As far as I can appreciate the position as described, that would be the effect.

22,737. And you do not think that is a desirable effect?—I think it indicates a position which is positively ludicrous.

22,738. With regard to Scripture. In your view was the question which Christ had to consider the same question which we have to consider, or different?—You mean when He was approached on the question as it is given in St. Matthew, whether it was lawful for a man to put away his wife for every cause?

22,739. Yes?—I have no doubt, as is held by all the expositors, that the question was suggested by the different schools, and their view of the Deuteronomic law—whether divorce was confined to adultery in Deuteronomy, or whether “anything unclean in her” had a wider meaning. As is well known, Hillel’s interpretation was a very lax one, even to the point of mere dislike, and the School of Shammai was stricter and limited it to the single case.

22,740. If the question were whether a man could of his own hand, without resort to any tribunal, for any cause, put his wife away, do you think that is the same question as we have to consider, namely, whether divorce should be allowed for grave moral fault at the instance of either spouse proved by strict legal evidence before a competent tribunal?—Lord Guthrie, I think the difference between the two cases is absolute and extreme, and Phillips Brookes, whose opinion was very valuable as he was in close touch with the American experience, and divorce is much more freely granted there than it is with us—emphasises that point, and he says that the divorce known to the ancients—the divorce which was submitted to our Lord’s judgment in that question—was a divorce which differs *toto caelo* from divorce as we know it—a solemn sentence given in a court after a procedure.

22,741. (Chairman.) Can you give us where it was?—I have not got it now. He was afterwards the Bishop of Massachusetts. It is in the second volume of his life by Professor Allen.

22,742. (Lord Guthrie.) Is your opinion the same whether the saving clause in St. Matthew, fifth chapter, and also the nineteenth chapter, is original or not?—I indicated just now, Lord Guthrie, that I do not think that touches the real fact, because you are in this dilemma: either our Lord spoke in the absolute words allowing no divorce at all, and in that case the belief of the Apostolic Church, indicated by the interpolation in St. Matthew and the teaching of St. Paul in the 1st Corinthians, seventh chapter, indicates that the Apostolic Church did not understand him to legislate, or He used the excepting words and so allowed that dissolution was permissible in the case of *stupræ*.

22,743. We had Dr. Salmon referred to last time?—Yes.

22,744. I notice in his book, “The Human Element in the Gospels,” he says, “I incline to the belief that our Lord uttered his precept against dissolution of marriage in the most general terms, and without allowance for possible exceptions; and that St. Matthew’s addition was made in order to bring the precept into conformity with the usage of the Church at the time his Gospel was written?—That is a passage well known to me, and it is very important because Provost Salmon was a man of immense learning and knowledge and it practically represents the concessions of a great scholar.

22,745. In the Courts we attach importance to the *temporanea expositio*. Do you think what is in St. Matthew can be taken in that category?—Yes, it must be taken as the opinion of the Christian community.

22,746. Do you think that the opinion of any line of Fathers can come comparably within the same category?—No, because, firstly, they are inferior in authority; and, secondly, because almost immediately this great wave of ascetical tendency passed over the Church; and in reading the Fathers you continually find yourself confronted with the interpretation of the whole relationship of the sexes, which is quite inadmissible to us.

22,747. It is put to us that there is a distinction between what Christ said about divorce and what He said about war and oaths and litigation, and many other subjects which, of course, involve necessary exceptions; that what He said about divorce is legislation—and the only instance it was put to us of legislation at Christ’s hands. Do you see any grounds for that distinction?—I see none. I am very impressed by seeing that a very sane interpreter—Edwards in his book on the Corinthians—adduces actually in a moment of forgetfulness the formula which he says is Christ’s legislative formula, “It was said,” “I say unto you”; and quite forgets that that formula was used in connection with oaths and murders, and so on.

22,748. You referred to Bishop Creighton?—Yes.

22,749. Do you know the passage where he says Christ came to lay down great general principles and not to enact laws?—It is in the letter to Canon Stocks?

22,750. Yes?—Yes, I know it.

22,751. Does that agree with your view?—Yes, entirely. I subscribe entirely to the position which Bishop Creighton indicated not only there but in many places.

22,752. The view is that a general command necessarily involves no possible exception. Is that a possible method of application either in the New Testament or any other book?—I do not think so. I think it argues a complete misconception of our Lord’s whole method to suppose He was legislating in the way it is submitted he did with regard to marriage; it was not His method. He put forward great principles and left them to be applied. May I point out that that is the view of Dr. Hort, a very great authority. Dr. Hort, in his book “Jewish Christianity,” discusses the relations of Christ and the law, and among other illustrations he deals with this treatment of the law of divorce, and there he takes the line that our Lord was acting there just as in all other cases; He was propounding a Christian principle and was not giving a specific law, but was leaving it to be effected by the gradual application of this principle which He lays down.

22,753. Then coming to the Fathers, one has always accepted the view that the fathers did face the present question, and maintained that in no possible case could there be the right for the Church to avail itself of the existing law. On looking at the passages it seems to me they never had this question before them at all; in short, that they had the general question as Christ had, and never faced the question we have, namely, this: supposing an adulterous wife has left her husband and is living with another man and bearing children to him, and the husband so left has not the gift of continence; would the Church condemn his re-marrying?

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—As far as I know I should say not so, but I do not profess to speak with authority about the Fathers. I have some knowledge of them; in fact I have spent a good deal of time in reading some of the Fathers, notably Augustine and the earlier Fathers; but I find that the patristic and casuistic literature, of which I have some knowledge, at that period is affected by four great faults. The writers are totally ignorant of natural science; secondly, their notions of scripture are quite fantastic sometimes; thirdly, they are dominated everywhere by morbid asceticism. I might give examples; for instance, where Jerome says the wood of marriage is to be cut down by the axe of virginity; that is the ridiculous position they take; that the wood is grown in order to be felled with the axe: the Mosaic law raised this wood and it is the duty of the Christian law to cut it down. Then there is the ecclesiastical and dogmatic presuppositions of the writers. Those four reasons go far to render the patristic and casuistic literature of the Middle Ages of very little good for our guidance to-day.

22,754. We had it put by a witness here, that notwithstanding the general statements of the Fathers they did sanction from time to time cases of re-marriage of divorced persons, and the answer was they showed now lax they were, and how they fell away from their own doctrine. Do not you think it just shows that they were men who recognised and were prepared to meet the necessities of human life?—I think there is no doubt that individuals were time-serving and collapsible under pressure, and I should be sorry to commit myself to all that is done by the servants of the Church in the early times. I have no doubt there was much time-serving and unwarrantable divergence under pressure, but I am clear on this point, and the evidence I think is certain, that the doctrine that marriage *per se* is indissoluble is neither Christian nor Catholic but distinctly Roman. It is not the doctrine of the first Gospel nor of those who admitted it into the Church, nor of the Eastern Church, nor of the Christian emperors of the West, nor of the Reformers.

22,755. As to the difference of opinion that existed from the Fathers right down, do you think John Sellden was exaggerating, and I wish you would translate one word for me here, when he says the most learned men on this question of indissolubility and re-marriage, theologians and jurists alike, are “distracti.” May I say that is all sixes and sevens?—Yes.

22,756. “Viri doctissimi theologi juris consulti que sunt distracti”?—Yes, it is a very just translation.

22,757. Do you think there is anything in the position or knowledge or circumstance of the Fathers that supposes they do go the full length and were unanimous in a way that should affect our sense of present duty?—I cannot think it, because, as I say, the ascetic presupposition on which they worked is not that which one can accept. Even in the Council of Trent it was categorically laid down—the catechism of the Council of Trent—that the marriage state is intrinsically inferior to the unmarried state; and I think that really vitiates the general testimony of the mediæval view.

22,758. Do you agree with Bishop Cosin in his argument on the dissolution of marriage where he said this: “It hath also been said that if the Bill passed”—that is Lord Ross’—“it will pass against the Church of England, which I confess I do not understand,” and then, omitting a passage, he says: “I know not why they should be called the Church of England that join with the Council of Trent, and plead so much to uphold it rather than others that join with all the Reformed Churches, and plead against that Canon of the Church of Rome which hath laid an anathema upon us if we do not agree with them.” You agree with that?—Yes, entirely. I think no difference is more marked between our own generation of Anglicans and the 16th and 17th century than the attitude taken up towards the Reformed Churches. I will give an example. Rogers’ “Treatise on the Thirty-nine Articles” is, as far as I know, the first treatise on that formula. He published it in 1607, with a dedication to Bancroft. His method is to tabulate the errors he is going to refute, and the

authorities he will appeal to, and he always takes the opinions of the Reformed Churches as his authorities. I should like to give another instance of a later period, that is, post-Restoration, at which the Church of England may be assumed to have adopted its modern attitude. I would refer to the evidence of Dean Granville, Bishop Cosin’s son-in-law, Dean of Durham in the reign of Charles II. and James II., a man who would not take the oath under William, and died in exile abroad. He was a High Churchman, and he left among his papers a form of questions that he addressed to penitents to show whether they were or not fitted for the blessings of the Church, and they include this: “Do you hold that the Church of Rome is in all those respects in which the Reformed Church has separated from her a corrupt Church?—I do. Do you hold that the Reformed Churches are true Churches of Christ, part of the whole Catholic Church in which the Gospel is most purely preached and the sacraments most purely administered?—I do. Do you believe the Church of England is the best reformed of these Churches?—I do.” Those are the conditions which a High Churchman of the Caroline epoch had in his mind when he was not talking under pressure, but at home, freely dealing with private penitents. That is published by the Surtees Society, the “Remains” of Dean Granville.

22,759. Do you know any reason why we should be influenced by what the Council of Trent did? How many Englishmen were in it?—The English Church was not represented there at all.

22,760. Reginald Pole was the only English one?—Yes. It did not fulfil the conditions under which alone a general council could proceed.

22,761. Do you know the book with regard to the Reformers and Holy Matrimony by Mr. Watkins?—I do not possess it, but I know it.

22,762. In the index and in the book itself there is no reference whatever to any Reformers or any writer since the Reformation, but here is the statement of the writer—an admirable book it is from its own point of view: “From the time of Gratian”—he was in 1100—“the teaching of the decretum on the subject of divorce and re-marriage was practically the teaching of the whole Western Church; the controversy was in fact closed, and for the purpose of this treatise it is useless to pursue the investigation further. For the past 700 years the historic Churches of Western Christendom have declined to recognise re-marriage after divorce.” What do you say to that attitude of mind?—I think, my Lord, it is an attitude of mind which is not only unreasonable itself, but is entirely opposed to the whole of the English Reformation.

22,763. What do you say to the statement that for the past 700 years the historic Churches of Western Christendom have declined to recognise divorce. The Scotch, you know, and the French, and the German, and the Norwegian, and the Swedish, and the Danish consider themselves historic Churches, and I suppose in Western Christendom they are ignored?—As I said just now, from the point of view of an Anglican it is grotesque.

22,764. But apart from an Anglican?—I mean that such a statement is grotesque from the point of view of an Anglican who has regard to Anglican history. I am aware that since the Tractarians a wholly new position has been created. It is really a new situation, and unless that is realised—that the Tractarian point of view is not in accordance with the general lines of Anglican Divines, not only the latitudinarian, but the High Church Divines—I am sure that the position of the Church of England will not be fairly appreciated.

22,765. Do you mean the view that the “Western Church” can only be used in the sense of including the Roman Church and the Church of England?—That view certainly was not the view of the Anglican Church. What is called the Branch Theory is quite unknown to our serious Divines.

22,766. Then it has been put, in this Commission, that to introduce desertion means an exception to the hitherto recognised Christian law, which would only

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make exception in cases of adultery. I suppose you look upon the Church of Scotland as a Christian Church under a Christian law?—Undoubtedly.

22,767. If the Church of Scotland since the Reformation has had—acquiesced in by all the other Churches in Scotland—desertion as a cause, do you think it can be fairly said the only exception known to the Christian law is adultery?—I think it is quite inapplicable language.

22,768. It has also been said in this Commission that in Scotland, where divorce for desertion is allowed, it cannot be consistent for the minister to use the words, "What God hath joined together, let no man put asunder." Do you see any difficulty in that?—I do not see why, and as illustrating that I have appealed to a letter which was published in Archbishop Temple's Memoirs, a letter he wrote in answer to an inquiry about the marriage of the innocent divorcee, and the line he took when interpreting those words. He said the Church of England does not teach that marriage is indissoluble, but it teaches it only as to those whom God hath joined together, and that God separates those who commit adultery. He took that line, and if you adopt that I think it applies equally to the case of wilful desertion.

22,769. It has been said that a union cannot be said to be for life if it be possible to terminate it for any reason whatever?—Tertullian used that text to prove that a second marriage was inadmissible. This is it: "Therefore, if those whom God has conjoined man shall not separate by divorce, it is equally congruous that those whom God has separated by death man is not to conjoin by marriage."

22,770. I suppose that although you may be deprived of your canonry for certain causes that I shall not indicate, you consider the appointment for life?—Unquestionably.

22,771. It has also been said that the opinion of the Church of England from the Reformation has been that of indissolubility; I am not talking about desertion or anything of that sort. Is it not the fact that right down from the beginning you have had eminent persons in the Church of England who have maintained that marriage may be dissolved for adultery?—Undoubtedly.

22,772. After the statement had been made one looked up some eminent persons, and for instance Bishop Joseph Hall, whose dates are 1574 to 1656; I suppose there is a no more eminent name in the Church of England?—Very eminent.

22,773. I will just give you one sentence, and ask you if you think this expresses what is your view. He says, "I doubt not, but I may notwithstanding great authorities to the contrary safely resolve that in the case of divorce it is lawful for the innocent person to re-marry. But for that I find the Church of England hitherto somewhat tender in the point, and this practice where it rarely falls, generally hold, though not sinful, yet of ill-report and obnoxious to various censures. I should therefore earnestly advise and exhort those whom it may concern carefully and effectually to apply themselves to the forementioned remedies; reconciliation, if it be possible, to prevent a divorce; holy endeavours of a continued continence, if it may be obtained to prevent a second marriage after divorce. But, if these prevail not, I dare not lay a load upon any man's conscience, which God hath not burdened. I dare not ensnare those whom God will have free." Does that represent a large body, right down from the Reformation, of the very highest opinion of the Church of England?—Most certainly. A much higher Churchman than he, Sanderson, a very prominent Restoration divine and a great casuist, he took the line—

(Chairman.) I think we had better adjourn now.

Adjourned for a short time.

22,774. (Lord Guthrie.) I just want to ask you with regard to the law of the Church of England. Reference has been made to Canon 107 by which people had a judicial separation, but they could not proceed to any other remedy. Do you remember that?—Yes.

22,775. I notice with regard to that it is dealt with by Henry Hammond, D.D., 1605 to 1660, who was

chaplain to Charles I. and suffered for his episcopal and royalist opinions. He was Archdeacon of Chichester, and he takes this view. He recites the bond that is to be entered into and says, "which manner of proceeding prescribed by the Canon (1) by way of monition and counsel which differs from Divine precept, (2) by requiring a bond for the observing of the monition (which useth not to be required when the Divine law distinctly commands obedience), do seem to infer that this marriage after Christian divorce is not looked upon by the Church as an adulterous commission, but rather as a matter of dangerous consequence if it should be permitted." Do you agree with that view?—Quite.

22,776. It has been put to us that there you have the law of the Church of England prohibiting divorce and declaring marriage indissoluble?—Yes.

22,777. Apparently Hammond took it the other way?—Yes.

22,778. You agree with that, do you not?—Yes, quite.

22,779. With regard to a separation having really very much the same effect as divorce you quoted Bishop Cosin. Provost Salmon has a single sentence in which he says this: "It is clear from the Old Testament quotation that the breach of the marriage does not so much consist in the marrying again as in the separation by man of those whom God hath joined; consequently, the sin is as much committed when man ordains a separation from bed and board as when a new marriage is sanctioned"?—Yes.

22,780. That is in the line of the same view?—Exactly.

22,781. Lastly, you refer to civil marriage being made compulsory on all. You are against that?—I do not think it would meet the difficulty it is proposed to meet.

22,782. I see it was actually carried into the form of a statute in the Cromwellian time?—Yes, it was.

22,783. In the nominated Parliament of 1653, which was after the Long Parliament, Samuel Gardner, in his history of the Commonwealth and Protectorate, says this: "On August 24th the new Parliament passed an Act declaring that only marriages solemnised before a justice of the peace would be recognised by the State, that putting an end to all difficulties arising from defective registration. As the Act contained no word prohibiting the parties from having recourse to such a religious ceremony as they thought fit, whether before or after an official union, there was nothing in it to give offence to any reasonable person who refused to regard marriage as a purely civil institution"?—I confess that I think the distinction between civil marriage and marriage is a very useless one. I do not think there is much value in it. I think it is misleading. English churchmen are accustomed to talk about it in that way, but if they would ask themselves, Is there a middle term from the Christian point of view between marriage and no marriage, they would say None; and it is throwing dust in the eyes of people to say "civil marriage," as was done in the Deceased Wife's Sister Act, as if it is to be distinguished from other marriage.

22,784. Then I observe in Canon Liddon's University Sermons, Second Series, he quotes with approval an opinion by Sir John Taylor Coleridge in his Life of Keble?—Yes.

22,785. With regard to the harm that has resulted from the 1857 Act, I will just ask you to consider whether the three heads of damage that he thinks have resulted are not all capable of being either done away with altogether or materially mitigated. Here is what Sir John says. He refers to the judges who have administered it, and he says—this is the first point—"When I consider the effect on the purity of the public mind and the proceedings of the court daily circulated among all ages and classes"; and then the second part, "The collusion between parties, sometimes defeated but too often no doubt successfully practised; and, above all, the fatally strong temptation which its open doors must offer to conjugal infidelity, I do not believe that the eminent judges would be disposed to commend the law which they have been called upon to administer." Now the

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first difficulty you think might be got over by prohibiting publication?—I should desire that.

22,786. We have suggestions as to mitigating, if not getting rid of, collusion, which I need not trouble you with. And the last point is the fatal temptation that its open doors must offer to conjugal infidelity. If marriage were prohibited between the guilty spouse and the paramour do you think that would largely overcome that damage?—I cannot but think that if marriage were prohibited between the guilty spouse and the paramour that a great source of adulterous motive would be stopped.

22,787. If those three points, which are all that Sir John Taylor Coleridge mentions as resultant damage from the 1857 Act were got over, do you see anything else?—I think it is impossible to doubt that a lax law of divorce—that is a law which granted divorce for many causes—would act and re-act very badly on the general moral tone of the community, but I do not suppose it is contemplated to have a lax law. The intention, I suppose, would be a law that was resting on a definite principle, and I do not think that a law which was rescued from laxity and sentiment would have a bad effect, even though it allowed several causes for divorce.

22,788. But any law that allowed divorce at the will of one of the parties or by mutual consent you would object to?—I think that would be inadmissible on Christian principles.

22,789. (*Lady Frances Balfour.*) When you speak about the laity of the Church of England and the communicants, I suppose you include the women?—Certainly. But not in that passage, because the comparison was between male electors.

22,790. Now, have the women communicants of the Church of England any power in electing the House of Laymen?—I think at present—I am not sure that my information is the most recent—that the franchise is limited to the males. Sir Lewis would know.

(*Sir Lewis Dibdin.*) No, it is not so.

(*Witness.*) Women, too?

(*Sir Lewis Dibdin.*) Yes.

(*Witness.*) Well, I was wrong. My interest in that society is not sufficiently great.

22,791. (*Lady Frances Balfour.*) Are the women the greater proportion of the communicants of the Church of England?—Yes.

22,792. And they now have a voice in the House of Laymen?—I understand so.

22,793. Then I want to thank you for the paragraph as to the equality of the sexes, because I think it puts it better than any other witness has done?—I think the Christian point of view undoubtedly includes complete equality.

22,794. And you would do away with cruelty?—If I were conforming our law to what I should conceive Christian principle required, I should do away with adultery plus cruelty, and equalise the grounds.

22,795. As it is in Scotland?—Yes.

22,796. (*Sir William Anson.*) I think you stated it was difficult, if not impossible, to define either the body or the mode of getting the opinion of the Christian Churches—in fact, the Christian community as a whole on these matters?—I think what I said was there was no single body entitled to speak for the whole, and therefore to attempt to form an opinion as to what the Christian society as a whole thinks is rather a difficult process.

22,797. You would have to compare the opinion of one society with the other, and take stock with regard to the result?—Yes.

22,798. Similarly with regard to the Church of England. Since the Reformation has there been any body to speak for the Church of England as a whole?—The only body authorised to speak for the Church of England as a whole is Parliament.

22,799. Neither of the two Houses of Convocation?—The Houses of Convocation have certain statutory functions of a modest kind, but their co-operation with the Houses of Parliament would appear not to be necessary because for the greater part of the history of the Reformed Church the Houses have not acted at all.

22,800. What I meant was, if you wanted to ascertain the opinion of the Church of England as a body, where would you go?—No doubt you would have to take account of the convocations for what they are worth. The whole of the diocesan bishops sit in the Upper House of the two provinces, and so you get the opinion of the episcopate there. The dignified clergy are mostly represented in the Lower House, and to that extent are representative.

22,801. If you wanted to get a collective opinion of the Church of England would you say you would get it from either House of Convocation, or from the House of Laymen, or all three combined?—Certainly not from either or both combined. Dean Stanley is reported to have said once that the most trustworthy representation of the laity in England was a handful of Broad Church ecclesiastics, and I think he spoke substantially the truth.

22,802. I suppose anyone would say that the principal spokesmen anywhere spoke the mind of the Church?—There is always a temptation to maintain the representative character of one's own opinion.

22,803. And the opinions stated to us to-day are individual opinions?—Well, they are individual opinions, but they are the opinions of very representative individuals in many cases.

22,804. Is not there always a risk of some person or party who can get the ear of the public, asserting that they are expressing the opinion of the Church of England?—Yes, there is always that danger.

22,805. And that we have to guard against in ascertaining what the opinion of the Church with respect to the law of marriage is?—I think so. I would point out, Sir William, in this connection, that where you get a large body pledged to a doctrinal attitude—pledged to the view that it is religiously inadmissible that marriage should be dissolved—it is very difficult to realise that their opinion on the practical questions is worth very much. It is discounted by their avowed conviction.

22,806. Then Parliament in legislating would simply have to take care that it did not run counter to any large body of religious opinion?—That would be an important factor to be considered, I think.

22,807. And we are driven to consider what interpretation is to be put on one or more somewhat disputed passages of the new New Testament?—That is the scriptural basis from which the Christian views no doubt are drawn.

22,808. Your view is that the injunctions with regard to marriage, which are required in the Gospel of St. Mark, are the words of Christ laying down the broad principle, and that the words of St. Matthew are the application of that principle by, at any rate, a large section of the early Church?—I think one may fairly interpret thus what in this view was an interpolation.

22,809. And that that is the method on which we may venture to believe Christ intended his words to be interpreted. I want to get at your point. Was it liable to be applied in different cases?—In estimating what the character and intention of Christ's words were I could hardly find a more complete bit of evidence than that provided by an interpolation, if it be such, into one of the synoptic Gospels of that which must be at least the view taken by the Apostolic Church.

22,810. And that that would be a high authority as to the principle to be applied?—Yes, I think it would be difficult to find a higher one.

22,811. And the Church may accept that as an authority?—Yes.

22,812. And in that way you might conceivably extend the causes for the dissolution of marriage beyond adultery?—Well, it is clear you are precluded from taking the view that our Lord legislated in the direction of making marriage absolutely indissoluble. You are free to say this *vinculum* can be dissolved by something else than death.

22,813. That is what you mean; the words in St. Matthew, and also the words in St. Mark, are not a conclusive and final statement of marriage law for all time?—No, they are not legislative.

22,814. Then, assuming that marriage is dissoluble on certain grounds, you would be in favour, I take it,

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of making the indissolubility available equally for rich and poor?—I think that is indispensable.

22,815. Without going into the mode in which it is to be carried out you would be in favour of that?—I think it is indispensable.

22,816. As to the extension of grounds of divorce we have had various other grounds suggested besides adultery. But take the case of incompatibility, which I think was put to you by Sir Lewis Dibdin, would you draw a distinction between matters which are matters of fact, and matters which are matters of opinion?—I think the distinction is a very important one. With regard to so-called incompatibility of temper, I should have thought that was no ground for divorce on Christian principle, because the attitude of the Church would be one of exhortation. You are not bound to remain in the state of incompatibility of temper. You must reform your temper.

22,817. Put yourself in the position of a judge before whom a case of adultery was proved: that would be a fact on which you would be bound to adjudicate?—Yes.

22,818. Supposing a couple come and say "We no longer love one another," would you feel in the same satisfactory position as a judge?—Well, were I a judge I should want to know whether his lovelessness had matured into such concrete acts as to enable me to form a judgment of its gravity.

22,819. And your view is that that would be satisfactory proof that the couple no longer loved one another, might not be the same in the view of another judge who had to adjudicate in the same case, so that you might get a variety of tribunals forming different opinions as to what amounted to incompatibility of temper sufficient for dissolution of marriage?—Yes.

22,820. That is a different thing to whether or not adultery had been committed as a fact?—Yes, quite, I think.

22,821. Have you any opinion as to the various different grounds for dissolution of marriage that have been put to us. Desertion?—I think desertion clearly must be admitted, because I think most people would hold that you had scriptural authority for that. St. Paul's treatment of the question in the seventh chapter of the 1st Corinthians seems, I think, to bear out the conclusion that desertion is a ground for divorce *a vinculo*.

22,822. Desertion, that is, with clear intention not to return?—Wilful desertion.

22,823. Whether or not another relationship was formed with a person of the opposite sex?—Yes.

22,824. And cruelty?—Well, cruelty that went to the length of endangering life or limb; but of course cruelty as a term must be defined, and defined carefully.

22,825. As a ground of separation or divorce?—I am talking of grounds of divorce because I decline to contemplate on Christian principle this separation *a mensa et thoro*, which I think authorises a break of an essential part of marriage.

22,826. Then insanity?—There I think we come into view of one of the new conditions. The ancients knew little or nothing about disease, whether mental or otherwise. We believe we have accumulated a considerable amount of knowledge on those points, and I think that knowledge ought to be relevant to a settlement of the marriage law.

22,827. So without pronouncing any opinion you think it should be considered?—*Primâ facie* I should say there is a ground.

22,828. Then long periods of imprisonment?—I think that is a case that must be considered.

22,829. And then habitual drunkenness?—Well, that I should hesitate more about, because I do not know how far drunkenness has come into the category of a fixed and incurable matter.

22,830. The difficulty about all these cases is that questions of degree arise?—Yes, but I think it is a *primâ facie* case to be considered.

22,831. Then as to the inadmissibility of marriage of divorced persons. You are clearly of opinion that the guilty party should not be allowed to marry again?—The guilty party should not be allowed to be married

in church, but I think his marriage before a registrar might well be permitted.

22,832. The innocent party might, as now, be married in church. But I understood you to say in your proof that you were opposed to the use of the church for the marriage of guilty parties?—I said I should desire that an option should be given to the clergy to refuse to officiate, but I should not allow them to withdraw the church. I should use the Divorce Act, idea—to allow the church to be used; but in order to propitiate as far as possible a large body of religious opinion, I think it would be prudent to give this option to the clergy to decline to marry the innocent party.

22,833. But to be bound to allow the use of their church?—Yes.

22,834. In the case of the guilty party?—No, in the case of the guilty I should not allow the church to be used.

22,835. You would not allow the church to be used in any circumstances by the guilty party?—No; I think the deepest distinction should be drawn between the guilty and innocent party. The guilty have offended greatly against society and the Church itself, and I think society should deal with it as severely as possible.

22,836. But the innocent party is —?—I think they should be able to demand the services of church and clergy, but I see there is a large body of people who object to re-marriage of divorced persons, and I desire to propitiate them.

22,837. But you would be against civil marriage as the only legal form of marriage?—I think there are certain advantages about civil marriage. It would relieve the clergy of an obligation that rests on them, and which they are not in a position to fulfil, whether these people are what they pretend to be or are within the prohibited degrees and so on. These questions ought to rest for consideration and investigation more on a public authority I think, but civil marriage as a remedy for the strained relations between Church and State does not help at all. The real difficulty emerges not at that point, but it emerges at communion.

22,838. Supposing the guilty parties wanted the blessing of the Church on their marriage, what security would there be that the practice would be the same in the different parishes and diocese?—There would be no security at all.

22,839. Unless the Church had power to make general rules which it does not now possess?—Yes.

22,840. Supposing the Church had those powers, what security would there be for continuity of Church opinion in the matter?—Well, assuming that the conditions that obtain at present continue to obtain in the Church of England, there would be no security at all. You might get a diocese filled by a very rigid churchman who would make it a point of conscience with him to press on his clergy and even coerce his clergy not to celebrate a marriage. Then you might, on the demise of that excellent man, get a man that took a diametrically opposite view.

22,841. The opinion of the Church has changed on this from time to time?—Yes, I think markedly so.

22,842. Whether the *Reformatio Legum* was or was not an expression of Church opinion, you believe it to have had the approval of two archbishops?—I think it represented the view of the archbishops. Sir Lewis takes rather another view.

22,843. With regard to the Canon 107, that clearly contemplates re-marriage?—It contemplates it, but it also regards it as inadvisable.

22,844. But nevertheless as a thing so legal that the parties had to enter into a bond that they would not re-marry?—Yes, and I think it explains that singular case of Lord Devon. As you remember, Lord Devon, according to Laud's biographer Heylin, had secured a divorce, not only *a mensa et thoro*, but *a vinculo*, and he succeeded in persuading his chaplain, William Laud, to marry him at Wanstead. I think William Laud must have persuaded himself that there was something of the nature of a contract between him and Lady Rich which justified him in applying the canonical rule.

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22,845. Now Canon 107 contemplates two married parties who wish to be separated and who clearly, if separated, might be re-married if they did not undertake that they would not re-marry?—It certainly contemplates it.

22,846. What was the authority for dissolving the marriage?—I do not know, and I wanted to learn if I could, because I do not understand the situation. As I say, the 107th Canon seems to contemplate the possibility of persons getting married after a divorce *a mensa et thoro*. I do not understand that. Perhaps Sir Lewis would tell me.

(*Sir Lewis Dibdin.*) It is not open to me to say anything, Canon, at this moment.

22,847. (*Sir William Anson.*) At any rate the canon relieves the two parties from the solemn obligations on which they entered at marriage, and it assumes that they might re-marry if they did not enter into a bond that they would not?—It certainly assumes that.

22,848. I want to know how it was that they could do this?—I cannot answer.

22,849. Or what authority there was that relieved them from the liability to a charge of bigamy?—Well, I do not know.

22,850. At any rate the clergy are entitled to regard these canons as binding?—Now you raise a question of the degree of obligation of canons. I think it most important to bear in mind that canons in the Church of England have only a limited contingent authority. I should say they are of the nature of byelaws which must not be applied against the statute.

22,851. The clergy cannot say, "This canon is binding on my conscience whatever the statute says"?—No.

22,852. But you want to protect the clergy from an outrage on their conscience in the matter of re-marrying in the Church?—Well, I think one should respect a considerable volume of religious opinion; and I think, though it cannot be contested that legally Parliament is omnipotent, practically it would be very ill-advised if it violated the conscience of a large section of people.

22,853. But the opinions of the clergy have varied?—Yes, but I think it would be an idea with the general community that it is an outrageous thing that without any repentance or *amende* to the society, whether Christian or national, people should be able to come to the church and get married.

22,854. You are aware that Archbishop Manners Sutton stated in the House of Lords that re-marriage was admissible?—He was saying it no doubt on the Christian principle that if the *vinculum* is broken it is broken, but there is another principle that is expressed by our rubric which shuts out notorious persons from communion—the principle of moral discipline.

22,855. And though they might be able to re-marry they should not be admitted to the communion?—Exactly.

22,856. Then if this permanent separation is, as you say, as complete a dissolution of marriage as can be, except with regard to the inability to re-marry, do you think that as to the separation orders they should be permanent or temporary?—I hesitate to give an opinion, because I do not think my experience has brought the matter sufficiently before me to enable me to express an opinion worth giving.

22,857. Have you paid any attention to the effect of the laws with regard to divorce in the United States?—Last year I had the opportunity of spending some months in the United States, and I spent a fortnight in North Dakota, which was until recently the centre of the worst marriage scandals in the States, and I made a great many inquiries and talked to many people about their marriage laws and the working of them, and the conclusion left on my mind was that in England perhaps we do not altogether understand the position as it exists there. To begin with, the divorce statistics in America are not to be isolated from the other statistics—criminal statistics—of the country. Just as you have got an enormous quantity of murders, so you have an enormous quantity of divorces, and if you were to go into it I think you

would find all the criminal statistics, as well as those of marriage, are very much larger than anything existing in an old settled community, like in England. There are certain broad reasons which affect them all, and we must not separate divorce from the others. For instance, more than a million immigrant aliens come into that country every year. They come, very often, from the most lawless classes and from the least law-abiding portions of the classes, and then there is no strong public opinion as to the authority of law in the new districts. Then the great size of the country makes some offences very easy, like desertion and bigamy. It is difficult to trace people. Then there is the large number of divorce laws, and they strike one of course; but I was struck by the fact that 98 per cent. of divorces in 1886 are said to have been for the six following causes: adultery, desertion, cruelty, imprisonment, habitual drunkenness, and neglect to provide. Now, I think none of those causes can be called frivolous causes, and if they were properly defined and guarded they might be regarded as adequate causes. The great defect of America is the great laxity with which the marriage contract is formed; and, secondly, the bad effect of a defective administration of the law. Many of the men who administer the law in the Western States are destitute of almost every legal qualification. Yet nobody can fail to see that the larger portion of the American society have a very high view of the marriage covenant, and they argue, and I think with force, that there might be much worse things than divorce—widely extended condonation of adultery, or of such conduct as makes the marriage tie a profanity; and they maintain they are trying the experiment of getting a high standard of marriage, and I think they make it out to an extent. And then we give too much importance to the number of divorces, and do not sufficiently consider what the alternative to a prohibition of divorce may be.

22,858. But one ground, you think, is the laxity with which the marriage tie is entered upon there?—Yes. I think in the Eastern States it is much better, but still in the Western States it is very bad. To begin with, they have never had a Lord Hardwicke's Act, which prohibits the marriage of mere minors, and they have no Established Church, and so have not been able to look to that to help the clergy out of a ditch, so to speak.

22,859. But the solemnity of the religious ceremony here, you think, has an effect in impressing the importance of the marriage obligations?—Yes.

22,860. And that would not be obtained by a civil marriage?—Not for a long time. You cannot unlearn the lesson of centuries in a very short time.

22,861. We have had evidence that the civil marriage makes a man realise he is entering into a business transaction, and that the religious ceremony is a mere form?—I think that is a preposterous view to take with regard to our people. Take the poor; they do regard registry marriages as, on the whole, scarcely respectable; large sections of them do, at any rate, and that view alone is very suggestive.

22,862. (*Sir George White.*) I should just like to ask you one question on separation. I do not quite gather whether you are against separation by a summary court of jurisdiction altogether?—I am very chary about giving any opinion about it, but I think my opinion would rather be this: that separation, if it were to be replaced by divorce, would have to be, of course, granted with a much more solemn and careful system of granting than ordinary separation is granted at present; but I think the working of the separations cannot be supposed to be satisfactory, and it might very well be a case that to substitute sentences of divorce, or such of them as divorce would be granted for, would be better.

22,863. Then you said you considered it unwise for Parliament to pass any law that outraged the conscience of any considerable section of religious feeling. May I bring that down to the question we are now considering. It is quite evident from the evidence we have had here, and which I presume you agree with from what you have said, that any extension of the grounds of divorce would strain the relationship

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of the Church of England with the State a good deal. You agree with that proposition which has been put before us?—I think it probably would, but if it were associated with such a change as I indicated—the total prohibition of guilty divorcees being married in church, and an option granted to the clergy to marry innocent divorcees—I think the strain would be considerably mitigated.

22,864. That contemplates that there would be a very large number of parishes where the clergy would, having an option of remarrying the innocent party to a divorce, decline to do so?—I think there would be a certain number, but I think the number would not be nearly so great as perhaps would naturally be supposed if the clergy were really free to exercise their own judgment; but as things are working at present Parliament grants an option to the clergy, and the bishops take the option out of the clergy's hands and proceed to put the strongest pressure upon them not to use it. I think that should be restrained by legislation if the Church of England is to have a fair chance of dealing with any situation that is contemplated.

22,865. You say in your proof that equity is offended when the right to marry is refused to an innocent wife or husband?—Yes, and I recommend the option with the utmost reluctance. I think the innocent divorcee is entitled to be married, but here is the situation and you have a choice between two evils.

22,866. You think there is no strong feeling amongst the laity as to the indissolubility of marriage?—I am clear on that point, that the mass of English Church opinion among the laity is in favour of re-marriage.

22,867. You were also asked the question that if the national law came in collision with what was admitted is the law of the Established Church, that a great difficulty would arise, but that the views of Christian society must prevail over the State; what would that result in?—It would undoubtedly, Sir George, in the case of the Church of England, mean that we should have to acquiesce in the cancelling of the State connection.

22,868. That is one of the possibilities put before this Commission that we have to contemplate probably. I gather you would deprecate such a thing?—My view is that from the national point of view the separation from Church and State would be very unfortunate; therefore I should be very loath to accept the view that such a situation is necessitated or had arisen, and I should desire it to be made very clear that there was such a collision as made it right for a Christian to repudiate the connection.

22,869. That is the point I want to get at. I do not say that for some of us that is an eventuality we should shrink from, but for other members of the Commission it might be very serious if that is inevitable, or to any degree probable. Then it is a contingency that the Commissioners as a body undoubtedly would take into account. May I gather you think the contingency a remote one?—I think the contingency ought to be quite remote, but I admit there are streaks of opinion very audible among the clergy of England just now which seem to indicate that it is very near.

22,870. Then I think I follow that in interpreting the marriage laws with too great rigour, it is possible you might bring about an increase of immorality rather than promote morality by more lax divorce?—I think so.

22,871. That is to say with such restrictions as now exist, and considering the condition of society as it now exists, some people might feel almost driven into immoral practices because of the hardships they are suffering from, and from which they could get no relief?—Yes.

22,872. Then with regard to the general question, I assume you feel that those who argue from scripture as to the indissolubility of marriage really place a too literal interpretation on the few passages, and such a literal interpretation that they would not be prepared to place on other of our Lord's teaching?—Yes.

22,873. That is to say they take His teaching as referring to general principles in many cases; but that they are not prepared to adopt the same view with regard to marriage?—Yes.

22,874. You say that there was no distinct command?—Yes.

22,875. But that the principles are such as are applicable to all the changes of society and they ought to be interpreted on that basis?—I think our Lord's words should be taken as the statement of the ideal; a statement of fundamental principle and not as legislation.

22,876. (Mr. Spender.) Might I ask a few questions as to your idea of procedure to clear away this possible conflict between Church and State. I understand you to say you would give the clergy the right absolutely to refuse to celebrate the marriage of guilty parties in church?—I would prohibit their marriage in church.

22,877. Then you would leave the law as it is under the Act of 1857 for the innocent parties?—No; I would transfer the option which is now by that law only given with regard to the guilty party to the innocent party. It is the greatest concession I would make towards this streak of opinion from which I dissent. But I think if it were met it would reduce the friction between the Church and the State importantly.

22,878. On page 6 of your proof you refer to the Deceased Wife's Sister Act?—Yes.

22,879. You deprecate a clause in that Act which draws a distinction between the clergy and the laity, leaving the former under the ecclesiastical law which for the latter was statutorily abrogated?—Yes.

22,880. Then you go on to say, "The essential futility of the distinction has already been demonstrated in the case of *Banister v. Thomson*" a case in which a clergyman tried to keep the parties who had taken advantage of the Act from communion?—Yes.

22,881. Now the point I want to ask you specially is this: are not you proposing to do exactly the same thing in this connection, and would not the same consequences almost inevitably follow?—Well, of course it would if things were quite the same in the two cases. You must remember that the number of clergy who feel very strongly about the re-marriage of the innocent party is enormously less than the number that feel strongly about the marriage of the guilty party; and the number that would feel that the guilt of the innocent divorcee re-marrying was such as to prohibit them from communion is very much less still. So I think the difficulty would be reduced to such narrow limits that it might be counted as negligible.

22,882. You would not deny that the principle is the same?—Yes, I think it is, but it is a question of degree. I want to restrict the area of conflict as much as possible.

22,883. It is a question of the volume and mass of the opinion in favour of one course or the other?—Yes.

22,884. Then we have had evidence before us from bishops of the Church of England and other clergy that the opinion—I think the Bishop of Birmingham said it to us—as to the absolute indissolubility of marriage was nearly unanimous; that wherever he went he had met bodies of churchmen of all schools of thought who, he said, were moving rapidly towards that opinion. He said it had hardened very much in the last few years, and he led us to think there was something very much like unanimity of opinion in the Church of England in the direction of, if we did anything, absolutely repealing the Act of 1857?—I disagree with the Bishop of Birmingham's estimate of the state of opinion in the Church of England at present, but I admit enormous efforts have been made to tie the Church to this view; and you must remember that that phrase, "the indissolubility of marriage," is a phrase which it is difficult to dissent from; when you get excited public meetings gathered together and a vote is taken, Is marriage dissoluble or indissoluble? it is almost impossible to get a meeting—especially under the influence and rhetoric of the Bishop of

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Birmingham—to give an expression of opinion that it is dissoluble.

22,885. Yes, I agree, but though the Bishop may be misinformed, or he may take too exaggerated a view of the general drift of opinion in the Church of England, it does seem to be the drift of opinion on the Episcopal Bench. I am going to submit that it might have the consequence of involving the clergy who took advantage of this suggestion of yours in serious episcopal censure. You would not take any steps in the Act of Parliament to protect the clergy?—I think any future Act of Parliament, if it is to have its proper effect, must protect the clergy more effectively. I think it is a monstrous thing that the Parliament should give an option to the clergy, and when they use it—not by the mere volume of irresponsible opinion, but by some solemn action on the part of their superiors, should be pilloried and be at a professional disadvantage. I think it is a scandalous situation and I feel very strongly about it.

22,886. You do not object to the principle?—I mean if it is going to come to this I think Parliament should give the option to the bishops, but that would be to do something which has never been done before. It has been said that the Church of England is governed by the bishops. I take leave to say that is not the case. It is governed by the law, and the law gives the bishops important functions. It is not governed by the bishops. That is a distinction differential of our Reformation. Almost everything was put into the statute, and it is only because the statute is no longer enforceable that the position of anarchy that we hear so much of in the Church has come about.

22,887. Would you explain to us what is the nature of the authority on which the bishops claim to act?—Of course, as you know, Mr. Spender, quite well, the theory of a bishop possessing an inherent authority conveyed to him by his consecration is the view which commends itself roughly to the Tractarian School and their modern representatives. That view did not prevail, certainly, in the Church in the 16th century, when there were governing statutes which were accepted by Church and State. It is no doubt the view that prevails very extensively on the Bench.

22,888. But a bishop on the Bench with the canon law in front of him regards himself as a court of law administering the canon in it?—I can only infer what their lordships' minds actually are from what they say and do, and I understand that the theory is that in consecration a bishop receives *donum veritatis* and an authority which gives him a quasi-divine right to authorise infraction of the statute. That is not a position that would be conformable to the English Settlement. Let me remind you of the Submission of the Clergy. Look what that did with our Church law and the conditions under which we live. By one clause that statute invalidated the great mass of the canon law; it said the rest should only be binding so far as it did not involve an infraction of a statute or custom of the realm, and it provided that the canon law in future should only operate in that way, and therefore canons were only like byelaws.

22,889. I suppose it would be admitted that there was amongst the canons a certain number which were obsolete?—Oh yes. Canonists held that canons become obsolete after a certain number of years' disuse. There is a great conflict as to how many; some say 40, some say 12, and some 60; but they do become obsolete and can only be brought again into use by the original authority that promulgated them. But that does not apply to canons that provide for doctrine; they are perpetually valid.

22,890. Then as to guilty parties; you propose the prohibition as a matter of national policy and as a means of easing the conscience of the clergy. I did not gather—

(Chairman.) No, that is not quite clear. The witness said as between the two guilty parties absolute prohibition, but with regard to the innocent parties marriage at all, optional.

(Sir Lewis Dibdin.) Not in church.

(Chairman.) Not in church, I mean.

(Mr. Spender.) That is my point.

(Witness.) I mean as to co-respondent and respondent I would not allow them to be married at all. I think that is contrary to the public interests.

22,891. (Sir William Anson.) Neither civilly nor ecclesiastically?—No; that they should be disqualified altogether.

22,892. (Mr. Spender.) And the one guilty party with another party would you allow to be married civilly?—Yes.

22,893. That is what I meant when I said you meant to cover the whole ground of policy there. You suggested that that would be a deterrent that would make for morality. I think you said it would take a few years to be known but in the long run it would be a deterrent?—I think so.

22,894. Do you recognise another view of that case, which seems possibly to be the more popular view of the case if one may take popular morality as a guide in these things? Supposing a woman has been ruined by a man or seduced by a man, it is popularly thought that the man is doing his duty and making her reparation when he marries her. That is the thought in common current morality?—I am familiar with that view, but I should say that is precisely a case in which the hardly worn aphorism "Hard cases make bad law" might possibly be adduced wisely.

22,895. Might not we take the Scotch experience as evidence of a deep feeling in Scotland that in many cases—I will not say in all—when a wife has been divorced, the co-respondent marries her as a dutiful and right thing?—That is the conventional view and I still dissent, and I do not dissent the less because of the fact that the judges in the nature of a legal fiction strike out one name so to speak. It seems to me that judges—though in a different way—like clergyman, are very often apt to be unduly dominated by the circumstances of a particular case under their eyes, and I can imagine that a judge with a particular case in front of him might be very much struck by the particular circumstances of those people and be led to form the conclusion that he would not prohibit their marriage, and would so come to look at it broadly. So I think in future legislation we should take it out of the hand of the judges to be able to get round the law like that.

22,896. Do you not think there is something in the current view?—I think there are cases of seduction in which the equities, if one had to appraise them, would point to an act of reparation to the one party, but I think that is precisely the hard case that makes bad law. I think that aphorism we have heard so much of of late is not properly used. It is the case, of course, that where you get a case so exceptional in its circumstances that to argue from it as a basis for general legislation is to lead you astray, there you get the hard case that makes bad law.

22,897. Would you say that is an exceptional case?—I should say it is.

22,898. In one sense one hopes all these cases are exceptional?—But I think the effect of the change of law which I venture to think is desirable would be largely to limit that number of cases. I think it would be a protection against persons who are intrinsically good and would be probably held back if they knew that the act was an infamous act that prevented any likely union.

22,899. We have had another view put before us by churchmen hitherto, and especially by bishops. They say that no distinction can be made between the guilty and innocent parties in divorce. It is suggested it is not for any human judgment to attempt to make a distinction?—But one would answer to that, first, that if you limit yourself to the mere statement, is or is not the *vinculum* broken, it is true that there is no distinction that can be made, and that is the distinctive feature of the Roman law, that the *vinculum* may not be broken, and therefore the difference between the guilty and innocent does not apply to it. But if you look at it from the point of view of the reformed Christianity, and the Church generally, it is taken in law that the *vinculum* can be broken, and then the ethical considerations come in. Of course if marriage is absolutely

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indissoluble the distinction between guilty and innocent fails, but if it is dissoluble then the ethical distinction is an important one.

22,900. Then you would say there is a distinction between guilt and guilt?—Yes, but we get then to a position in which human justice is a rough thing; we cannot get to complete equity.

22,901. (*Mr. Spender.*) If one may sum it up, your view, taking the whole case, is that the sanctity of the marriage tie is prejudiced when it is reduced to a mechanical bond between persons who are in fact separated by some fundamental breach of the contract?—I think so.

22,902. And you do not think the marriage tie is exalted by applying a view to it which conflicts with the common opinion of mankind?—It is an unworthy conception of it, I think.

22,903. (*Chairman.*) With regard to the question of marriage between two guilty parties after a decree, I rather understand you to say that the current opinion is based on consideration of what should be done between two parties after a wrong has been committed, whereas your view, as I gather, is to strike at the matter before any wrong is committed, by pointing out what would be the position if that wrong should be committed, and you think that is the real attitude that should be adopted?—I think so, and I think so because it would have a protective effect on all tempted people; it would have a very salutary effect on public opinion by indicating that this is a grave offence against society itself for people to commit adultery.

22,904. I do not think in the course of your evidence you have been asked a question on one point which I should like to ask you. You refer at the bottom of page 10 of your proof to the general position: "It would seem to follow that the conditions of divorce are properly to be determined by the State in the light of Christian principle with reference to the actual necessities and circumstances of men"?—Yes.

22,905. You broadly indicate it would not be inconsistent with Christian principle to admit divorce for some other causes than adultery, provided they were of adequate gravity. That I rather gather is your general view?—Yes.

22,906. I want to know whether in that consideration you have thought at all of the position of insanity?—I have. I think that is one of the new points that have emerged, and which I think is a point the importance of which it is impossible to ignore, and therefore in any really grave reconsideration of our marriage law I should suggest that medical science would have to bear its witness to the common stock in order to determine whether or not this was a condition that ought to be regarded.

22,907. Did I gather you would not consider it contrary to any Christian principle if it were determined that married life had become hopelessly impossible for this reason?—I should say that Christian principle would require it to be recognised as a valid cause for divorce.

22,908-9. Then I just want to appreciate this point about the option. I daresay you know at present under the law any of the parties to a divorce may re-marry?—Yes.

22,910. But "that no clergyman in Holy Orders of the United Church of England and Ireland"—as it was then—"shall be compelled to solemnise the

" marriage of any person whose former marriage may " have been dissolved on the ground of his or her " adultery." That is to say that they were not compelled to perform the ceremony of marriage on the guilty persons' re-marriage; but there is no option left there with regard to any innocent person. I rather gather you would suggest, as a means of making matters more workable, to grant that option in the case of the innocent person. Would that be so if the innocent person had got a divorce on the ground of adultery?—I should apply it to all cases of divorce.

22,911. Whether dissolution was for adultery or any other cause?—Yes.

(*Chairman.*) There is a correction I should like to make. I said in the course of Lord Guthrie's examination that there was no reference in Mr. Watkin's book to the *Reformatio Legum*. I see at pages 401 and 402 he sets out a few sections from the *Reformatio Legum*, and at page 426 he refers to the fact of the *Reformatio* "under the important collection of canons known as the *Reformatio*." I meant to convey that it was not dealt with or considered in any way as having any real bearing on the matter as far as I read this book. I think I ought to voice the whole of the Commission and thank you very much indeed for your evidence and the very valuable assistance you have given us in this matter. I am sure you must have taken a great deal of trouble.

22,912. (*Sir Lewis Dibdin.*) Before Canon Henson goes, my Lord, there are two little matters of fact I want to put right. One is with regard to the *Reformatio* and Parker's participation in it. This is the passage in Dr. Cardwell's preface, page 10: "However valuable in regard to questions of critical history this manuscript of Archbishop Cranmer may be, it is evident that in connection with history and ecclesiastical law a greater degree of importance belongs to the manuscript of Archbishop Parker. This latter manuscript, containing the whole code as revised and approved by Archbishop Parker, was made public with the Archbishop's consent in the same year. . . . but this manuscript is not known to be in existence"; and then Cardwell has a note: "Foxe must have had the consent of Archbishop Parker for the publication of his manuscript, but probably, although Strype thinks otherwise, he was not employed and directed by him." I think that puts it right between us?—Yes.

22,913. The other matter was in reference to Sir William Anson's questions to you as to whether Convocations could speak in the name of the Church of England. As your evidence will no doubt appear, I think you would not like it to appear without showing that you were cognisant of, I think, the 139th Canon, which says that if anybody denies that Convocation is the Church of England by representation he is to be excommunicated, I think it is, until he repent of his wicked error. I do not suggest that will alter your view, but I think you would wish it to be obvious that you had that in your mind in your answers?—I had that in my mind, yes.

(*Sir William Anson.*) The point of my question was to know if a Convocation in either province should be taken as being the Church of England.

(*Sir Lewis Dibdin.*) The canon says the Convocations of the two provinces are the Church of England by representation.

Monseigneur MOYES called and examined.

22,914. (*Chairman.*) Would you kindly inform us what is your exact position in the Church?—My position, my Lord?

22,915. Yes?—I am Canon of the Arch-diocese of Westminster, and also a Prelate of the Roman Court.

22,916. I think the Secretary communicated with the Archbishop of Westminster with the view of asking if he desired that someone should attend on behalf of the Catholic Church, and that you have been good enough to attend by his request?—Yes.

22,917. Might I ask how long you have been in Westminster, or in that part of the world?—I have been in Westminster since the year 1892.

22,918. You have been kind enough to send two short proofs, but I rather gather the latter is a little more explanatory than the former?—Yes.

22,919. Then we will take the latter that is headed "The question of conferring jurisdiction on any and what local courts, and what limitations; procedure in such courts." That is merely the question put with the view of giving you the foundation of something to reply to?—Yes.

22,920. Would you kindly read the answers you desire to make?—The answer in my statement to that first part would be:—"If I am asked to give an answer to this question, and the grounds on which I

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"base it, I can only say that believing, as a Catholic, that divorce in its ordinary acceptance as a dissolution of the bond of matrimony once validly contracted, and consummated, is contrary to the teaching of Christ, and therein to Divine law, and inimical to the interests of society, I am conscientiously opposed to the granting of such divorce in any court and under any conditions. I can best express what I feel in regard to the proposal by stating in brief the authoritative doctrine of the Catholic Church to which I belong." Shall I state the grounds?

22,921. If you please. This is a very convenient way of taking what you want to say, and the shortest way?—Well, the doctrine on which I base my belief, and the Church of which I am a member, is that—

"(1) Marriage between Christians is not only a contract, but a sacrament of the New Law, in which the union of the parties is wrought and ratified by God. In this sacrament, the parties themselves—not any officiating clergyman—are the ministers, each giving consent to the other, and God accepting and sealing the consent of both. (2) When such marriage is validly celebrated between competent persons, and is consummated, so that there is fulfilled in their union the words of Our Lord, 'and they two shall be in one flesh' (Mark x. 8), there exists between them a God-made bond of matrimony, or *vinculum matrimonii* in its completeness. The knot is of God's own knitting, and Christ teaches that it is God Himself who is the 'Joiner.' (3) Because the union is thus of God's making and a Divine work, it has the paramount and immutable character of Divine law, and is absolutely indissoluble except by the death of either party. It cannot be unmade by any act of the parties themselves, seeing that it is a covenant which they themselves alone have not made, but is one into which God Himself has entered as the Joiner. As a matter of Divine law, or God's own ordinance, it is intangible by any created power, and no human authority whether ecclesiastical or civil, can have any authority to dissolve it. As neither the Pope nor the Church can claim to override or alter anything which is of Divine law, neither can exercise any dispensing power to loose the complete and consummated bond of matrimony. 'What God has joined together, no man may put asunder.' The Catholic Church teaches that this principle laid down by Christ is absolute, and consequently that the words of Christ, 'except it be for fornication' (Matt. xix. 9) and 'excepting for cause of fornication' (Matt. v. 32), constitute a clause of exception, applying solely to the unlawfulness of separation or putting away of wife or husband, but not to the unlawfulness of re-marriage during the life-time of either. That is to say, unfaithfulness may justify separation, but does not dissolve the bond of matrimony by which they are still husband and wife, and any re-marriage with others during the life-time of either becomes adultery. The texts of St. Matthew, thus construed, fall into harmony with those of St. Mark (x. 11) and St. Luke (xvi. 18) and St. Paul (1. Cor. vii. 10), in which the prohibition is stated absolutely and without exception.

"(4) Anything which is called by the name of 'divorce' in the Catholic Church can never include any dissolution of the bond of matrimony ratified and consummated. By this bond the man remains the husband of the wife, and the woman remains the wife of the husband, and as no Christian can have at the same time two wives or two husbands, it follows that any attempted marriage of either during the life-time of the other with any third person is *ipso facto* null, and any cohabitation with such person is adulterous. The term divorce is, however, sometimes applied to, the two following causes, which do not involve any dissolution of the bond of matrimony: (a) Separation *a mensa et thero*, which may be granted for sufficient grounds, such as unfaithfulness or cruelty, &c., (b) Decree of nullity, in which a supposed marriage, owing to certain initial defects, is declared to have been null, from the beginning. Such nullity must be one arising from some antecedent cause, and not from any cause

"supervening after the marriage. The judgment does not effect the nullity, but merely declares it. It does not dissolve the *vinculum*, but affirms that it never existed. The grounds of such decrees are lack of freedom of consent; impotency or other canonical diriment impediment which acts as a bar to God's acceptance of the consent and the joining of the parties. The impediments which are held by the Catholic Church to be diriment or nullifying are the following:—1. *Error*, as to person, 2. *Condition* (if A. marries B., a slave, believing B. to be free). 3. Solemn vow of chastity or entering religious order, made before consummation of marriage. 4. Consanguinity to third degree. 5. *Crime* (if A. during a former marriage with B. has committed adultery with C., with promise of marriage after death of B., and if A. or C. has attempted the life of B., the marriage of A. and C. is null). 6. *Disparity of worship*, viz., marriage of a Christian with a non-Christian. 7. *Duress* or violence affecting liberty of consort. 8. *Holy Order* to which is attached obligation of chastity. 9. The *Bond* of a preceding marriage (if either party have a husband or wife still alive). 10. *Public decorum* (if one of the parties is solemnly or publicly betrothed to another person). 11. Madness or *amentia* (viz., imbecility precluding reasonable consent). 12. *Affinity*. 13. *Clandestinity*. 14. *Impotency*. 15. *Rape*. (5) Marriages which have been ratified merely verbally, but have not been consummated, and in which Christ's words 'they two shall be in one flesh' have not been verified, do not possess the bond of matrimony in its perfect and indissoluble character. Such marriages, apart from their civil effects, may be for sufficient reasons dissolved by Church authority. In cases of non-Christian, and therefore non-sacramental marriages, the Catholic Church recognises the Pauline privilege (1. Cor. vii. 15), according to which if one of the parties become a Christian, and the other refuse to live in peace with the person converted, the latter is set free from the bond of the marriage. The whole doctrine of the Catholic Church to which I belong may therefore be further summarised in the three following statements. 1. Christian marriage ratified and consummated is one and indissoluble except by the death of one or other of the parties. 2. Christian marriage, ratified verbally, but not consummated, may be dissolved by Church authority. 3. Non-Christian marriage is dissoluble in cases in which one of the parties is converted and the other refuses to dwell peacefully with the convert." That is the first part, my Lord.

22,922. I think we will finish it?—"Regarding, therefore, any divorce which professes to dissolve the bond of matrimony once valid and consummated, and to set parties free to re-marry, as an evil the contrary to the teaching of Christ, who wrought the regeneration of society mainly by establishing the unity and indissolubility of marriage, and therein the stability of the Christian home, Catholics desire its abolition, and especially that the poorer classes may be protected from its disintegration, and hope that any legislation undertaken in regard of it may be rather to restrict than to extend the facilities for a concession which they believe to be morally wrong and socially disruptive." Then, my Lord, "II. 'The question of separation orders—their extent and effect, and whether any and, if so, what, amendments should be made in respect thereof.' It is desirable that, as in cases of nullity, the civil courts should be empowered to intervene and to make separation orders, at the instance of husband or wife, on the grounds of adultery or cruelty. Access to the courts for such relief should be equally free to men and women, and to rich and poor, and separation orders should not be granted until every means of reconciling the parties has been exhausted. Orders granted on the ground of cruelty should be revocable or voidable whenever the conditions which motivated them can be proved to have ceased to exist. While securing the accessibility of the courts to rich and poor alike, it seems undesirable that the intervention of the civil authority in matters of such grave and delicate interests should be extended

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"farther than necessary, to the handling of the lower and local courts. Then I deal with another point, III. 'The question of reports of divorce and matrimonial causes.' The publication of reports of divorce and matrimonial cases should be severely restricted to such facts as are absolutely necessary for the ends of justice and the public good. The names of the parties, the nature of the crime, and the grounds of the judgment ought, in view of the recognised integrity of the courts, to furnish a sufficient guarantee to the public of the justice of the sentence and the legality of the procedure. The infamy attaching to such guilt thus established ought to be as great a deterrent as any that could result from detailed accounts of the proceedings. In no case ought descriptive details of guilty conduct to be allowed, and the public press ought to be protected from degrading its high function by subserving the prurient curiosity of the baser public and contributing to the work of demoralisation which is known to be the effect of such indiscriminate reporting."

22,923. Thank you; I think that covers everything one might find in the other proof?—Yes.

22,924. (*Sir Frederick Treves.*) I would just ask in what way the teaching of the Catholic Church in this matter holds divorce to be inimical to the interests of society?—What we believe is that the Christian home is the very centre and the source or the cell of the social organism, so to say, and that everything depends on its purity and stability for the healthy state of society; and we believe that Christ, in regenerating and healing society, began by securing the indissolubility of the bond of matrimony, restoring it to its original condition, and securing the permanent relation between husband and wife, and the right of the woman to stand with fixity of tenure at the side of her husband, and that both should exercise a permanent function of education with regard to their children; and in that we have an important interest to society, which is gravely menaced by divorce.

22,925. (*Sir William Anson.*) I understand that, looked at as a social question, you regard the family as the basis of society?—Yes.

22,926. And the security of marriage as practically the basis of the family existence?—Quite so.

22,927. May I ask for a short explanation on one or two points. Would disability existing at the time of marriage be a ground for dissolution or nullity of the marriage? I mean if the insanity of one of the parties was proved?—Not insanity in its wider meaning, or except in the sense of *amentia* or imbecility. The disabilities that disqualify or render the marriage null are generally described as diriment impediments as they prevent the union of the people, and of these insanity except as *amentia* is not one, and would not be considered by the Catholic Church as an impediment.

22,928. (*Chairman.*) It is not so when there is no possibility of consent being given?—Yes, if it could be shown that the patient was not in possession of his reason at the time of the marriage.

22,929. (*Sir William Anson.*) Yes; I was not referring to subsequent matters; I was asking what the disabilities were at the time of the marriage?—Yes, quite.

22,930. Duress?—The causes of impediment would be, first of all, an error; if a person marries A and finds out afterwards it is B instead of A; and, secondly, duress, or force or constraint; and, thirdly, if the man is already married; another would be physical impotency.

22,931. And if the insanity were proved to have been insanity existing at the time of the marriage, would that do away with the possibility of real consent?—In an ecclesiastical court it would require to be proved that the insanity was such that the person could not give rational consent, but not insanity as a supervening cause.

22,932. Then when the declaration of nullity is made the parties would be free to re-marry?—Absolutely; both parties; because they are regarded as people who have never been married; at least as far as that particular case is concerned.

22,933. (*Lady Frances Balfour.*) What view would the Church take about malicious desertion over any long

time?—The Church would recognise desertion as a sufficient ground for separation. Naturally desertion is a separation.

22,934. Of course the contract has been broken in desertion?—Of course the contract has been broken in desertion, yes; but it would not be recognised as dissolving the bond of matrimony.

22,935. And yet the contract is broken?—Well, one of the conditions or obligations of the contract is broken.

22,936. The chief condition—living together?—The bond of matrimony according to the conception of the Catholic Church is that the two people are joined together by Almighty God, each living for the other. That would not be affected by any subsequent act on the part of one or the other.

22,937. But they are not living one for the other when the other has gone to America?—That would be an act of their own free will, which would be a non-fulfilment of the contract but not a dissolution.

22,938. The free will of the guilty party who deserts but not of the party deserted?—Quite so; but if either or both consent to live at opposite ends of the world, the Catholic Church would hold that the bond of marriage still exists though they have sinned against it.

22,939. They have broken the conditions that made it a marriage?—Well, it is more than a contract between man and woman according to the Catholic Church; it is not the man and woman, but it is the man and woman and God; and consequently the covenant would remain quite apart from any act of the two. Otherwise the Catholic Church would (one might contemplate a case) have to recognise that any two people could dissolve their own marriage by agreeing to live in separate continents.

22,940. (*Lord Guthrie.*) I understand the Catholic Church does not say all marriages are indissoluble, only Christian marriages?—Only Christian marriages indissoluble, and Christian marriages that have been consummated.

22,941. There must be the two conditions?—Yes.

22,942. What is meant by Christian marriage?—That in which the parties are Christian.

22,943. In the sense of being baptised Christians?—Yes.

22,944. Whether baptised by persons belonging to the Catholic Church or outside the Catholic Church?—The Catholic Church recognises baptism by anybody whether inside or outside.

22,945. Protestant or Catholic?—Protestant or Catholic; even though the baptiser were a Jew, provided the baptism were validly administered.

22,946. Provided the words were used?—Yes, with true matter and intention.

22,947. But take for instance a marriage between two Jews; that is not within the category of indissolubility?—No.

22,948. And would the Catholic Church see any objection to a law being passed which would enable Jews to dissolve their marriage for such causes as they thought fit?—Not upon the ground of principle; upon the ground of public policy.

22,949. That would be apart from the Church view altogether?—Yes.

22,950. Take the case, Monseigneur, of a Jew marrying a baptised Christian, and the marriage consummated, is that a Christian marriage?—It is not regarded as a Christian marriage.

22,951. No, that would be dissoluble?—That would be dissoluble.

22,952. It would be dissoluble not merely for adultery but for simply desiring not to live with the other party?—Yes.

22,953. And would not involve desertion?—No.

22,954. In the case of two Jews who became Christian, does the marriage originally dissoluble then become indissoluble?—By their baptism it would become a Christian marriage.

22,955. Retrospectively?—Retrospectively, provided the parties are still in that frame of mind which is equivalent to a consent to marriage.

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22,956. You said that marriage was so treated as a basis of society?—Yes.

22,957. Well, of course, that would apply to non-Christian marriages too?—Yes, quite so.

22,958. Then why does not the Church hold that non-Christian marriage is also indissoluble?—One consideration is that of the general public policy—that which is good for society.

22,959. But is it not rather this, that it is not a sacrament in the one case and it is in the other?—Quite so.

22,960. Do you see, Monseigneur, any satisfactory ground for defending indissolubility unless that of marriage being a sacrament?—Except upon the general ground of the good of mankind.

22,961. Yes, but I mean from the Christian and scriptural point of view; unless marriage be a sacrament, do you see any other ground on which indissolubility could be defended?—I can conceive that the attitude of the Catholic Church would be so still, even if Christ had not made it a sacrament, in view of His definite teaching.

22,962. The words in St. Mark and St. Luke?—Yes; and if that was His law laid down by the Christian Church, even though not a sacrament, we should hold it to be indissoluble.

22,963. In this country, would you tell me, how does the system work? Supposing a Roman Catholic marriage, and the husband, let us say, who has been wronged were to go to the Divorce Court and get a divorce from his wife on the ground of adultery, what would be done?—In the first place he would commit a sin against the Church law; as long as he had not repented of the sin he could not receive absolution or Holy Communion; or if scandal were publicly given he would be regarded as a public sinner who could not, according to the law of the Church, receive Holy Communion.

22,964. If he repented he could be absolved?—Oh, certainly.

22,965. Supposing he went further and proceeded to re-marry, he would then be excommunicated, I suppose?—If he married any other person than the person from whom he was divorced, in that case, according to the mind and teaching of the Catholic Church, he would be regarded as a public sinner and unable to receive absolution or Holy Communion.

22,966. If he undertook to leave his second wife and never to cohabit with her, could he obtain absolution?—Yes, provided he made due satisfaction for the scandal given.

22,967. Even though the marriage takes place?—Yes; if he declared to the Church his sorrow for what he had done and his intention not to live with or cohabit with that person, in that case he would be absolved.

22,968. Now take this case. Supposing you have two Catholics married in the Catholic Church, and it is found that the marriage is null according to the law of the Catholic Church, and suppose the relationship has been too near and they have not got a dispensation, in that case could they go to the Catholic Church? Supposing there was a ground of nullity according to the Catholic Church, whom do they go to in England to have that established?—In the case of nullity?

22,969. Yes?—The procedure would be that one of the parties would have to initiate proceedings.

22,970. Before?—Before the Diocesan Court. The procedure then would be this: that as soon as the case is put before the Bishop's Court, the bishop is bound to appoint a defender of the validity of the matrimony, who has to be sworn that he will do all he conscientiously can to maintain the marriage. The evidence is then tried before the court. If the verdict of the court should be that the marriage is valid, then the marriage stands.

22,971. With an appeal to Rome?—Either party may appeal. But if the case is that the defender of marriage should fail, it must go to a higher court or to Rome on appeal. At Rome it is brought before one of the congregations. But the principle that regulates it is that no marriage can be dissolved or declared invalid unless there is the sentence of two courts agreeing to its invalidity.

22,972. Supposing that has taken place on account of the relationship of first cousins without a dispensation. That is a ground of nullity, is it not?—Yes.

22,973. Supposing that has been got; that, in England, will produce no effect, because the State law will not recognise that as a ground?—Yes.

22,974. Now, Monseigneur, supposing in that particular case it happened also to be the fact that the wife had committed adultery; the husband first gets from the Diocesan Court a decree of nullity?—Yes.

22,975. Supposing he then went to the Divorce Court and got a divorce on the ground of adultery, would the Catholic Church object to that?—Not at all.

22,976. Because he had already nullified the marriage?—Yes; his position would be that he would say: I am not married in the eyes of God and of the Church, but to free myself from the civil effects, I pass into the civil courts.

22,977. Have you known cases of that kind in England?—Yes, sometimes. A number of cases come before the court, especially at Westminster. I have been told that the whole number of cases in which marriages have been invalidated are about six cases in 18 years, in all England.

22,978. Have these been cases in which a nullity was first got in the Ecclesiastical Court?—I am speaking now simply of cases of nullity, not referring to the civil court.

22,979. Was it a fact that in all of those cases they then proceeded to the civil court for some other cause?—I have heard of two or three, but it is possible there may be more. These cases include cases of relationship without a dispensation. It was usually a case either with regard to dispensation, or with regard to duress.

22,980. A Catholic would have no motive to get an ecclesiastical nullity, unless it involved a ground on which he could go to the civil court and bring the marriage to an end?—He might have a motive with regard to the Catholic Church. He might wish to live apart, or if his nullity were recognised and declared in the Catholic Church, the Catholic might hold himself free to marry again; of course he must reckon with the civil power.

22,981. Do you know how it is in Ireland?—I cannot tell. The law was absolutely the same with regard to procedure.

22,982. But you know there is no divorce law there?—No divorce.

22,983. Do you know to what extent the Catholic Church in Ireland takes advantage of the civil separation procedure?—I do not know.

22,984. Is there any ecclesiastical separation procedure as well as nullity?—Yes; it is more common than the case of nullity; separation *a mensa et thoro* is granted in cases of adultery or cruelty.

22,985. Is that in cases where they also go to the civil court?—In the Catholic world it would be considered that if a husband commits adultery the wife has the right to live apart if she chooses.

22,986. Then it is not necessary, in order to put oneself right with the Church, to get a civil order?—By no means.

22,987. It is a fact, is it not, that Catholics do avail themselves of the civil separation order proceedings without any objection on the part of the Catholic Church?—Quite.

22,988. Supposing they go for separation on the ground of habitual drunkenness, what would the Catholic Church say to that?—Habitual drunkenness is not mentioned among the causes in the canon law, but I assume it might be brought under cruelty.

22,989. The separation orders by the Ecclesiastical Court that you refer to—are they permanent or temporary?—As a rule they are temporary, except with regard to the case of adultery in which the wife would have a right to a permanent separation.

22,990. In other cases?—In the other cases merely as long as the causes exist—the causes which motivated the separation; so if the husband were given to habitual drunkenness and then became reformed he could claim his right to cohabit with the wife.

22,991. And you think that is a proper provision with regard to State separation too?—Yes.

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22,992. So as to give an opportunity for reconciliation and reformation?—Yes.

22,993. Why not in the case of adultery?—Well, it is regarded as a graver crime, I believe, but the Church would encourage the reconciliation of the parties even in the case of adultery.

22,994. And would encourage condonation?—Oh yes, by all means.

22,995. With regard to the Pauline exception; in this country, of course, that does not come into play at all?—Not usually.

22,996. Except possibly in the case of a Jew becoming a Christian and the wife remaining a Jewess?—Yes.

22,997. In the mission field it may be important?—It is mostly in the mission field that it occurs.

22,998. Would you tell us with regard to relationship; by the present law of the Catholic Church, what degree of remoteness requires a dispensation?—With regard to dispensation, the Church says no dispensation can be granted, of course, in the direct descending line. With regard to the collateral line, at what is called the fourth degree; that would be called in this country third cousins, I suppose.

22,999. Yes; dispensation is there required?—Yes.

23,000. In point of fact, do not many Catholics marry without getting any dispensation?—You mean those that are kindred?

23,001. Yes?—I do not think so. Catholics ordinarily would go to confession before their marriage.

23,002. But are they asked that question?—Possibly, but if they are conscientious at all, they would mention the fact.

23,003. Have you not known cases where they have forgotten all about it?—It is possible, but I should think it very rare.

23,004. Dispensation can be granted even in the case of uncle and niece?—Yes.

23,005. The Duke of Aosta?—Yes.

23,006. That was a blood relationship?—Yes—consanguinity.

23,007. (*Sir Lewis Dibdin.*) In the case Lord Guthrie put to you of a Christian marrying a Jewess, you said there that marriage was dissoluble. That would not be dissoluble by the Christian partner?—No.

23,008. It would only be dissoluble if the non-Christian chose to go?—The dissolubility by the non-Christian party is supposed when both are non-Christian to begin with, and when one becomes a Christian; it is only then that the Pauline privilege can be brought in by which the marriage would be dissolved if the non-Christian partner does not consent to live under conditions compatible with the Christianity of the other.

23,009. But the Christian partner could not do that?—No, unless the marriage was between a Christian and non-Christian; that would be a diriment impediment in the view of the Church. One of the diriment impediments in the Church is disparity of religion, and if the Christian marries without dispensation the marriage would be null and void.

23,010. Then would the Church uphold the Christian that left his non-Christian wife?—The Church would regard it as null.

23,011. They would not regard it as anything wrong if the Christian partner left the non-Christian partner and formed a relationship with somebody else?—No; that is to say, as far as a wrong against marriage is concerned, because the Church does not regard them as husband and wife.

23,012. Now the cases you were putting of nullity, where there are a series of appeals finishing up at Rome; would the declaration of nullity be on grounds which would not allow of a decree of nullity in this country?—Yes.

23,013. Supposing the party—say the man—who had that decree from the Church re-married in fact in England, how would that be regarded in the Church?—He would be regarded as perfectly free to marry.

23,014. Although according to the law of the State he would be a bigamist?—Yes, quite so; he would be a bigamist, I suppose.

23,015. But the Church would not put him under censure?—Oh no, not with regard to the law of the State; the Church would leave him to reckon as best he might with the civil penal effects.

23,016. They could not help that?—They could not help that. But with regard to the matter of conscience, he is married to the second person and not the first.

23,017. It would not be considered an offence, independent of the marriage law, to have broken the law of the State?—No; the Church would hold that the enactment on the part of the State was entravelling the law of Christ.

23,018. The law of the Church comes before the law of the State?—In matters of conscience like this.

23,019. And though he had committed bigamy, the Church would think he had not only committed no wrong, but would not officially discourage him from doing so?—Would not officially discourage him from doing so.

23,020. And his children who were considered legitimate by the law of the land they would regard as—?—As illegitimate by the law of the Church, but as legitimate if either party were in good faith as to the validity of the first marriage.

23,021. That would be a remarkable position?—It would be difficult to see how it could be otherwise, unless the Church considered that the law of the State in the matter of the sacrament was to override the law of the Catholic Church. If the Catholic Church holds it as a matter of sacrament and relationship with God, then she would hold that that cannot be overridden by any civil law of any kind.

23,022. The marriage law is a matter for the Church in which the State has no right to interfere?—Not with regard to the matter of conscience and the bond before God. With regard to the civil effects; with regard to inheritance of property and civil rights in any way, the Church would say the State had a right to do that from its own point of view.

23,023. But the Church would not regard it as its duty, as far as any claim goes, to compel the man to observe the law of the land?—Not in this particular matter, because, it would be regarded as contrary to the law of God.

23,024. And in this particular matter if the law of the State and the law of the Church disagree, the view of the Church is that the law of the Church must prevail?—Always, if the Church is acting within her own sphere.

23,025. And in this matter?—The Church would hold it was within its own sphere. The Church has always held the doctrine of the two spheres—that each Power is to be supreme in its own sphere.

23,026. Now a question on another part of your evidence. You say, in interpreting our Lord's words in St. Matthew, the view of the Catholic Church is that it refers to separation?—Yes.

23,027. But not putting away the wife with a view to re-marriage?—No.

23,028. Was there anything of that kind known in the days of our Lord—separation without re-marriage?—As far as one can judge, there was the laxity introduced in later times to which our Lord refers, of putting the wife away, and apparently cases of separation. I think it must have been known at the time, because, if I mistake not, in the Roman law there is mention of separation.

23,029. Is there any authority for saying that at that date anything except divorce with its full consequences was known at all?—That is a controversial matter, I suppose. That I think would be open to question. What the Church looks to in interpreting the doctrine of divorce is our Lord's teaching.

23,030. But you would expect that our Lord would use words in the sense that they would be understood by those he was talking to?—Yes, I think His words would be intelligible; and we can see that our Lord would not only have regard to the conditions then and there existing, but to those which were to obtain in His Church.

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23,031. But would that be intelligible if it meant *a mensa et thoro* at that date?—I think if our Lord said a man must not put his wife away except for fornication, and that even after separation if either party marry again that they are living in adultery, and that that is the state of things that He was bringing it back to, I think He would be understood.

23,032. Do you think that those he was speaking to would understand if he said a man shall not put away his wife except for the cause of fornication—do you think anybody there would at all understand that that meant he might separate himself from his wife if she had committed fornication but might not re-marry?—I think the words themselves would convey the import with sufficient clearness; and also the Lord refers specifically to the question of re-marriage.

23,033. But that is outside the exception of fornication?—Yes; what is held by the Catholic Church is that the clause of exception refers to the separation; that a man may not separate except for fornication.

23,034. I know; but the point I am putting is whether you think that could possibly have been understood in that sense by anybody at that time. I gather you say you think it could?—I think so; I think the words would be sufficiently clear, especially as we find it in the other texts.

23,035. (*Judge Tindal Atkinson.*) You say that a Christian marriage followed by consummation makes the parties to that marriage one flesh?—Yes.

23,036. Take the case of a non-Christian marriage followed by consummation; why does not that make them one flesh?—We hold that the completeness of the bond of marriage depends on two things; first the consummation, and the sacrament. It is the sacramental effect with the consummation that makes it indissoluble.

23,037. Then the sacramental character of the marriage is the essential condition?—It is an essential condition.

23,038. Then what do you mean by marriage being a sacrament?—We mean it is not merely a contract by which two people, A and B, agree to take one another, but we believe also that Almighty God accepts in a special manner the consent of the two people, and that He gives them special grace of the Holy Ghost in

order to make them man and wife and to help them in the performance of their duties.

23,039. (*Mr. Brierley.*) Just one question with regard to an answer you gave to Lord Guthrie. You said that in matters of separation the practice of the Catholic Church is to make temporary orders?—Yes.

23,040. Do you mean that they make orders for a definite term, or orders that on the face of them are permanent but with leave to either party to set them aside?—Take the case of a separation—say for cruelty. In that case the court would give to either party the right of living apart, but would warn them at the same time that in the case of that cruelty having ceased to exist their duty would be to live together again.

23,041. In form they would be permanent orders?—Yes, quite so.

23,042. Either party would be enjoined to come together again?—Well, would be commanded.

23,043. And I suppose either party would have the right of coming to the court again to have the order set aside?—Yes.

23,044. On proof that the causes had been removed?—Yes.

23,045. And that you consider is satisfactory?—Yes.

23,046. I was rather looking at it with regard to separation orders in the civil courts. One course has been suggested of making the order for a certain period of time and leaving one of the parties to have it renewed; and the other was pretty much what you have suggested—leaving the order permanent in form?—Yes.

23,047. The latter is the practice of the Catholic Church?—Yes.

23,048. And you consider that works well?—Yes.

23,049. (*Lord Guthrie.*) Do these separation orders include any order about maintenance?—The husband would be bound to support his wife.

23,050. And is the amount fixed?—No.

23,051. If he did not do so he would be dealt with?—Yes, he would be dealt with.

(*Lord Guthrie.*) The Commissioners are much indebted to you.*

* See, also for the terms of the decree "Ne temere" on marriage, and observations by the witness thereon, App. XIV., p. 122.

Adjourned.

Winchester House, St. James's Square, London, S.W.

THIRTY-FOURTH DAY.

Tuesday, 28th June 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The Right Hon. the EARL OF DERBY, G.C.V.O., C.B.

The LADY FRANCES BALFOUR.

The Right Hon. THOMAS BURT, M.P.

The Hon. LORD GUTHRIE.

Sir FREDERICK TREVES, Bart., G.C.V.O., C.B., LL.D., F.R.C.S.

Sir LEWIS T. DIBDIN, D.C.L.

Sir GEORGE WHITE, M.P.

HIS HONOUR JUDGE TINDAL ATKINSON.

Mrs. H. J. TENNANT.

EDGAR BRIERLEY, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

The Right Reverend the LORD BISHOP OF ELY called and examined.

23,052. (*Chairman.*) You are, my Lord, the Right Reverend the Lord Bishop of Ely?—Yes.

23,053. And you have been good enough to prepare a memorandum on the subject of the theological aspect with regard to the question of divorce, and we have all been supplied with copies of it?—Yes.

23,054. If I may say so, I think it is so fully prepared that it would be really simple if you would take it in your hands and read it to us, subject to any questions being asked of an explanatory character upon it?—Certainly, my Lord; I shall be glad to take that course. Shall I read it?

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[Continued.]

23,055. If you prefer that course?—Yes. “*Christ’s teaching as to divorce.*—The Christian view of any subject is determined by Christ’s teaching on that subject, if and so far as that teaching can be ascertained with reasonable probability. The New Testament, and, of course, especially the Gospels, supply us with evidence as to Christ’s teaching. That evidence must be reviewed according to the methods of literary criticism. The first three Gospels were written, roughly speaking, in the decade which preceded the destruction of Jerusalem, and within a few years after that event. Some 30 to 40 years, therefore, intervened between the time when our Lord taught and the time when the first three Gospels were written. It is reasonable to suppose that Christ repeated His teaching on a given subject on different occasions and not always in the same form. Different versions, therefore, of His words must have been remembered by His hearers, and must have been current in the earliest times. The Evangelists preserve a version of Christ’s sayings which reached them. When we consider the mode in which Christ’s sayings were transmitted through the memory of many men, through oral tradition, and when further we take into account the fact that His words having been spoken in Aramaic have reached us in a Greek dress, we are precluded from supposing that we have an exact or *verbatim* report of what Christ said.”

23,056. Might I ask on that, if we are not presented with an exact report it would be right to treat what we have before us as subject to a close question of construction?—I think what we have is the nearest approximation we can have to what our Lord said.

23,057. But might I indicate what is passing through my mind on that paragraph in your note? If one has to construe, for instance, an Act of Parliament, you have to do with the *ipsissima verba* and see what they mean; but if you have only a general statement which is a sort of report, it may be that you have to see what is the principle considered and not attach too great weight to the exact word used. May I say why I put that? Because it has been suggested to us by some witnesses, and various book passages, that the words which have to be considered in the Testament are indicative of a principle rather than as laying down any precise law?—I think they do lay down a principle, and I think that legislation must be based on that principle. I do not think we must construe our Lord’s words as though they were the words of an Act of Parliament.

23,058. Thank you. Probably other questions may be asked about that?—“The literary criticism of the first three Gospels appears to have attained the following conclusion. In the first and third Gospels (Matthew and Luke) there are two chief *strata* corresponding to two main sources. The first of these sources is identical or nearly identical with Mark. The second, commonly now denoted by the symbol Q (German *Quelle*), consisted, at least chiefly, of sayings of Christ; and the contents of this source we can approximately determine by noting matter not contained in Mark but common to Matthew and Luke. It must be added that a study of Matthew and Luke and a comparison of them with Mark shows that the authors of Matthew and Luke arranged and edited the material on which they worked, sometimes interpreting it, sometimes adding matter which either one of them derived from some other source unknown to, or unused by, the other. It is reasonable to suppose that a somewhat similar process of editing lies behind the record of Mark. Before considering the evidence as to Christ’s teaching on divorce, it will be convenient to notice the passage in Deuteronomy xxiv., to which reference is made in the record of that teaching. The substance of it is as follows. If a man marries and his wife ‘find no favour in his eyes’ because he discovers ‘some unseemly thing’ in her, he shall give her a bill of divorcement and send her out of his house. The woman is then free to marry another man. It is provided that, if the woman marries again and is divorced by her second husband, the first husband

‘may not take her again to be his wife. Clearly the crucial phrase here is ‘some unseemly thing.’ The literal translation of the Hebrew is ‘the nakedness of a thing.’ The phrase is a curious one, and probably means ‘nakedness’ or unseemliness of any kind. The point to notice is that it occurs in one other passage, namely, Deuteronomy xxiii., 14, where it is enjoined that every Israelite should carry with him a shovel that he might cover up ‘that which cometh from him’ that ‘the Lord who walketh in the midst of thee may not see the nakedness of a thing in thee.’ In itself, therefore, the expression seems to denote not what is morally evil but what is disgusting or unwholesome. Hence, in xxiv. 1, it seems to mean not necessarily unchastity, but rather ‘some improper or indecent behaviour’—those are the words of Canon Driver, commenting on the passage—“or even, it would appear, some bodily flaw or ailment which caused disgust. As to the later Jewish interpretation of Deuteronomy xxiv. 1, it is important to remark that in the first century B.C. two schools maintained two different views as regards divorce. The School of Shammai, laying stress on the word ‘nakedness,’ laid it down that unchastity on the wife’s part alone justified divorce. The School of Hillel, throwing the emphasis on the word ‘thing,’ ‘nakedness of a thing,’ and on the words ‘if she find no favour in his eyes,’ allowed divorce on the most trivial grounds, e.g., if a woman burned her husband’s food, or if he found another woman who pleased him better. We now consider Christ’s teaching. First, Mark x. The Pharisees ask Christ a question to prove Him. ‘Is it lawful for a man to put away his wife?’ The question is thus put absolutely, ‘Is divorce lawful?’ Christ asks for Moses’ enactment. They answer, ‘Moses suffered to write a bill of divorcement and to put her away.’ Nothing is said here as to the justification of divorce (whatever its meaning) which is required in Deuteronomy. From this version of Moses’ enactment it would appear that he permitted divorce ‘for every cause.’ Christ replies that Moses gave this commandment for ‘your hardness of heart.’ He points to the original institution of marriage, asserting that husband and wife are ‘one flesh.’ His decision is ‘what God hath joined together, let not man put asunder.’ Mark then records that in private in answer to the disciples’ question Christ asserted that the man who divorces his wife or the woman who divorces her husband and marries again is guilty of adultery. Thus, according to Mark, Christ asserts the absolute indissolubility of marriage. Luke xvi. 18. Luke does not record the conversation of Christ with the Pharisees; after, however, a saying about the abiding character of the law (comp. Matthew v. 18) Luke introduces the following saying: ‘Everyone that putteth away his wife, and marrieth another, committeth adultery; and he that marrieth one that is put away from a husband committeth adultery.’ The latter clause as to a man marrying a divorced woman does not occur in the passage of Mark just considered, but does occur in Matthew v. 32. We conclude, therefore, that Luke derived the saying from the source known as Q, whence came also the saying in the immediately preceding context about the law. According to Luke, therefore, Q contained a saying of Christ asserting the absolute indissolubility of marriage. We next turn to the earliest piece of evidence, viz., 1 Corinthians viii. 10. This epistle was written, approximately, 25 years after the Crucifixion. It is important to note that St. Paul himself tells us (i) that he visited Jerusalem three years after his conversion (that is from five to eight years after the Crucifixion) and spent 15 days there and that on that occasion he saw Peter and James; that 14 years later he again visited Jerusalem and then saw Peter and James and John. St. Paul, then, before he wrote 1 Corinthians had been in personal communication with at least three of the primary witnesses to Christ’s teaching. In 1 Corinthians vii. after giving directions to the unmarried and to widows, St. Paul lays an injunction on married people. ‘But unto the married I give charge, yea

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"not I, but the Lord, That the wife depart not from her husband (but and if she depart, let her remain unmarried, or else be reconciled to her husband) and that the husband leave not (or send not away) his wife.' Here then we have an independent piece of evidence as to Christ's teaching. According to St. Paul, Christ affirmed the absolute indissolubility of marriage."

23,059. Is that a necessary conclusion?—I think so, my Lord.

23,060. May I point out two suggestions that have been put before us at one time or another. In the first place there is no dealing at all with the position of the wife who seeks to claim relief from her husband in those words. I think the point has been mentioned. It does not deal at all with the position of the woman?—In the 12th verse: "And if she herself shall put away her husband, and marry another, she committeth adultery."

23,061. Yes, I see it does there. The other point that has been put broadly to us is, that this is a general statement which admits of the possibility of exceptions where the tie is one that cannot in any reason be maintained; that it was not dealing with such cases as that at all?—It appears to me that the words in the 11th and 12th verses are, as they are recorded, as absolute as they can be.

23,062. Yes; but I am asking for help to explain our difficulties. The suggestion has been made that that refers to the putting away by the husband according to Jewish law, and not to the intervention in any shape or form of a State which is considering whether the tie ought to be maintained because it is no longer possible of performance. That is the suggestion put to us?—Is it not the case that our Lord is laying down a human principle here?

23,063. I am venturing to ask your view?—That is what was my position—that He is laying down a human principle, a principle for human life which, if I might venture to use the phrase, in His judgment must be applied in all cases.

23,064. I think, if I understand, the suggestion made to us is, that when you go back to the 2nd verse you find the Pharisees are putting a question tempting Him?—Yes, tempting or proving.

23,065. They are asking about something that depended solely on the action of the husband, and does not depend on the intervention of causes which would justify the State in interfering at the suit of a party?—Of course the environment was the environment of the time; that is obviously so; an environment of Jewish life; it could not be otherwise.

23,066. Would it be fair to say, dealing with that environment, the action of any man who might for any cause, according to one School, on the one ground only according to the view of another School, take action without the intervention of any court at all?—I can only say that the words, as recorded, of our Lord appear to me to be as absolute as words can be.

23,067. I am sure you will not mind my putting difficulties one wants explanation about?—Certainly not, my Lord. "St. Paul lays an injunction on married people. 'But unto the married I give charge, yea 'not I, but the Lord, that the wife depart not from her husband (but and if she depart, let her remain unmarried, or else be reconciled to her husband) 'and that the husband leave not (or send not away) 'his wife.'"

23,068. What verse is that?—7th chapter 1st Corinthians, verse 10, and following.

23,069. Then a little later on there is the 15th verse, which I think the Scotch people attach some importance to?—I should be very glad to have an opportunity of touching on that, but of course it does not come in the treatment of our Lord's teaching.

23,070. You will deal with that in another part?—I am only taking this passage because of the words, "Not I, but the Lord." That is to say, St. Paul is dealing here with what he has learned of our Lord's teaching.

23,071. Perhaps the other point may be left till later on?—If that might be left till later on, my Lord. "Here, then, we have an independent piece of evidence

"as to Christ's teaching. According to St. Paul, Christ affirmed the absolute indissolubility of marriage."

23,072. Might I ask again, do you think that is the real interpretation, as a matter of construction, that should be put on the passage you quoted? Does that deal at all with the intervention of supervening causes which make life impossible between the parties? Is not it dealing with the mere question of separation without any adequate cause; or may it not be that is simply dealing with the case of parting, and if you do you must not marry. Does that necessarily involve any consideration of a supervening cause such as the husband's position, if the wife departed and lived with another person altogether, and had a family by him?—Of course, obviously it does not deal with details which might conceivably arise, but surely again it states a general principle that the wife shall not separate from the husband, but if that case should arise then let her remain unmarried.

23,073. That does not deal at all with the position of the husband who is left by the wife and forms an adulterous connection; it does not seem to contemplate such a case at all?—No, that case is not specifically dealt with here.

23,074. That is why I ask if you think it is quite legitimate to allow a complete conclusion that the teaching there is affirming the absolute indissolubility of marriage?—I think the "*μή χωρισθῆναι· ἐὰν δὲ χωρισθῇ, μὲνέτω ἄγαμος*" does affirm the general great principle.

23,075. I would like to present to you one of the formidable difficulties of a practical character which we have had before us; that is to say, the departure, say, of a guilty husband or a guilty wife, as the case may be, to another country, for instance, the Colonies or America, starting a new life and a new home there and leaving a perfectly innocent person, and perhaps children, behind. The question would really be whether there is anything in those passages you have referred to that would say that for such a cause as that the husband left behind is to be utterly without any remedy at all; whether that is necessarily involved in that sentence?—Again I think our Lord lays down in these passages a great principle. It is impossible He should have discussed particular cases, or if He did the record does not preserve the discussion; but the general principle is, I think, affirmed in these passages if we take them together, and such a case as your Lordship refers to is what I should call a hard case—an exceedingly hard case—but I do not think that from the teaching of our Lord as recorded in the New Testament one would gather that in such a case He would have sanctioned the re-marriage of the person who suffers.

23,076. Then will you kindly proceed?—"So far we have examined three witnesses as to Christ's teaching, viz., Mark, Q in St. Luke's version, and St. Paul. These three witnesses agree in their testimony that Christ asserted the absolute indissolubility of marriage."

23,077. There is a little note at the bottom of page 4?—That is quite a minor point. As I was going to use the argument, that the clause referring to a man marrying a divorced woman does not occur in the passage in St. Mark, but does in St. Matthew v. 32, so as to connect that passage with St. Luke, I thought it fair to notice that in a few manuscripts of St. Matthew those words are omitted, but it is a point which is quite a minor point. "The case changes when we turn to Matthew. We have to deal with two passages of Matthew. First, Matthew xix. 3 ff. Matthew here follows Mark's account of Christ's dialogue with the Pharisees, but he edits it in the following ways: (i) he changes the order of the dialogue and its distribution between the speakers; (ii) he obliterates the distinction between the public and the private dialogues; (iii) in the saying forbidding divorce he omits the words as to the woman putting away her husband, probably because this was a wholly abnormal case; (iv) he makes two additions which hang together, the former preparing the way for the latter, that is, first, to the question of the Pharisees he adds

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"the words 'for every cause'—'Is it lawful for a man to put away his wife for every cause?'—and to the words forbidding divorce he adds the qualification 'except it be for fornication.'"

(Chairman.) I notice in some of the codices the words are not quite the same; I think some have words that others have not.

(Lord Guthrie.) They all have the exceptional clause.

23,078. (Chairman.) Perhaps your Lordship would kindly help us about a minor point on which I should like some information. This is what I am going to ask you—if you would give us any explanation about this. It is page 153 in the Codex Sinaiticus—the last words: "'Whoso marrieth her which is put away doth commit adultery' is wanting"; the second Codex Bezae in the University Library at Cambridge: "Whosoever shall put away his wife saving for the 'cause of fornication and shall marry another," the second clause is wanting?—I do not quite gather the point.

23,079. Have you got page 153?—Yes, my Lord.

23,080. Well, look at the very bottom—in italics?—This is Codex Sinaiticus?

(Chairman.) Yes.

(Sir Lewis Dibdin.) I think Lord Gorell is putting the very point you took in that note.

(Chairman.) Yes. I only wanted a little further explanation of it.

(Witness.) This is on St. Matthew xix. 9, I think.

23,081. (Chairman.) Yes?—That clause is omitted in the text I have used.

23,082. Well, it is in some of the other codices?—It is omitted in some of the other codices.

23,083. I only want to get it generally. I think probably the details appear in this book; it is in some but not in all?—I have a book in my bag from which you could get full information, but I am afraid I cannot carry in my mind the list of the codices.

23,084. May I take it generally in those terms that you find it in some and not in all?

(Sir Lewis Dibdin.) What is that, Lord Gorell?

23,085. (Chairman.) That sentence "Whoso marrieth her which is put away committeth adultery." Those words are omitted, and apparently are omitted in the Codex Bezae Cantabrigiensis at page 155 at the bottom?—No, it is omitted in the text as given by Westcott and Hort as I have it here; the words "ὁ ἀπολελυμένην γαμήσας μοιχᾷται"—"He that marrieth her that is put away committeth adultery"—are omitted in the text I am using—the text of Westcott and Hort—they are added in the margin.

23,086. Then is that note at the foot of page 155 accurate?—I believe so.

23,087. The only point I wanted was that the present codices we have in existence do not all agree in some small details?—I do not think there is any serious difference which touches principle. I think there is no difference in the words which touch real matters of principle.

23,088. Then would you just tell me for my information what is the date of the earliest manuscript from which any translation of our Testament, as we have it now, has been made?—Well, I should not speak off-hand as an expert on those matters. I think it is supposed, on the most favourable theory, that the earliest uncial manuscript—the manuscript written in capitals, which is the oldest—might conceivably go back to Constantine when Constantine caused a series of codices to be prepared for his new capital at Constantinople.

23,089. Then it would be taken from something that then existed?—They would be undoubtedly copied from earlier manuscripts. I am speaking quite roughly, not having looked up the matter just lately, but I think that would be the earliest date for any codex that now exists.

23,090. All I mean is that in view of what you say about memory, these writings when first made, and the difficulty of being sure that all the copies are correct, are not we in some practical difficulty in being sure that they represent anything that was actually said?—

As I say, we cannot say we have a verbatim report of our Lord's sayings in any of the Gospels; and, further, there are variations in the presentation of the text in different authorities; and just as in the first case we apply the method of historical criticism, so in the second case we have to apply the science of textual criticism.

23,091. I suppose the result would be, you would say we have the substance of what was said?—Certainly I think we have the substance in the Gospels, and I think we can arrive at an approximate text of the Gospels; obviously there is a margin where there may be error in the text of the Gospels; we cannot settle all questions; but, practically speaking, we have a practically assured text of the Gospels.

23,092. Does it necessarily follow from that position of things that one is entitled to be certain that no qualifications were stated at the time?—I think one must examine the different witnesses to our Lord's sayings and see how far they agree. I have examined in this short paper three independent witnesses so far, St. Mark, St. Luke and St. Paul, and we can compare their result. Now I am examining another witness who diverges from them by the introduction of a single exception.

23,093. I am sorry I interrupted you, but one is so desirous of getting the best information one can. I think you got to paragraph B.?"—"Matthew v. 32. "Matthew in the Sermon on the Mount represents "Christ as laying down his relation to the law. 'I came not to destroy but to fulfil,' that is to carry on "the teaching of the law to its legitimate goal. "Christ therefore contrasts His final teaching with "the provisional enactments of the law. One of the "illustrations which He adduces is divorce. 'It was "said also Whosoever shall put away his wife, let him "give her a writing of divorcement; but I say unto "you that everyone that putteth away his wife, saving "for the cause of fornication, maketh her an adulteress: "and whosoever shall marry her when she is put away "committeth adultery.' Here then the same quali- "fication—'saving for the cause of fornication'—is "found as is found in xix. 3. and the following. We "have already seen that Matthew v. 32 is derived from "Q. We are now, therefore, face to face with the "questions arising as to the two qualifying clauses "of Matthew—'except for fornication,' in xix., " 'saving for the cause of fornication' in v. And first "what is the meaning of 'fornication' in these "two passages? Three interpretations of the word "have been given. (i) Prenuptial unchastity.—This "interpretation is generally put aside as unworthy of "serious consideration, mainly on the ground that none "of those who are called the Fathers of the Church "mentioned it; 'it is not an ancient but a modern "interpretation. But the real question is not what "interpreters thought who wrote when the Jewish "world had long passed away, but what the words would "naturally have suggested to Jewish hearers or "readers. Now, with a Jew, a passage in Deuteronomy "(xxii. 13, and the following) would have at once "come into his mind. It is there provided that, when "a man marries and after marriage alleges that the "woman is not a virgin, then, if (according to the "evidence prescribed) 'This thing be true,' the woman "should be stoned, 'because she hath wrought folly in "Israel to play the harlot, in her father's house.' It "should be noted that the verb used here ('to play "the harlot')—ἐκπορνέυσαι—in the Greek version of the "Old Testament corresponds to the Greek substantive " 'fornication'—πορνεία—used in Matthew. Christ "then, if this interpretation be true, substituting "dissolution of the marriage for stoning, allows that "if a woman has committed fornication before "marriage, her husband may put her away. In my "judgment this is the most probable interpretation. "If it be adopted, the two passages of Matthew do not "touch the question of divorce for adultery; they "rather provide that, if the wife is guilty of pre- "nuptial unchastity, the marriage is void *ab initio*." The second possible meaning, "Prostitution.—The "words of Matthew may mean 'except on the ground "of prostitution,' i.e., a man may divorce his wife if "she becomes a prostitute. Compare Amos vii. 17.

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" 'Thy wife shall be an harlot in the city.' This interpretation is that given by the Greek commentator Chrysostom on St. Matthew v. 32. He describes the wife who may be rightly divorced as one that hath intercourse with many—' πολλοῖς συγγνωμένῃ ' is the Greek. (iii) Adultery.—The two interpretations just considered give a distinct sense to the word 'fornication.' The third interpretation takes it to mean unchastity, which in the case supposed is adultery, a word of general signification being used instead of the special and appropriate word. This, it seems, was the almost universal interpretation in the Christian Church of the first centuries and certainly goes back to a very early date. Two authorities of the 2nd century can be quoted; (a) both the old Syriac texts (the Curetonian and the Sinaitic) in both passages of Matthew translate the Greek word for 'fornication' by the Syriac word for 'adultery.' Tertullian of Carthage, the first Latin Christian writer, in dealing with Matthew v. 32, gives the following translations: 'praeter causam adulterii,' praeterquam ex causa adulterii, and (transliterating the Greek word for 'adultery') 'praeter causam moechiae' (*adv. Mart.* iv. 34, *De Monogam.* 9, *De Pudic.* 16)." My point is that this interpretation goes back to the 2nd century; that is why I refer to the old Syriac versions and also to the phrases used by Tertullian in his Treatises against Marcion, on a Single Marriage and on Modesty. "This interpretation lies under the objection that in a passage in which the whole stress rests on the relations of husband and wife the word which expresses unchastity in its regard to the married state, that is the word 'adultery,' seems to be required. It must, however, be regarded as the common interpretation in ancient and in modern times, and is supported by predominating authority. The question still remains whether the words, the interpretation of which I have just discussed, can be regarded as representing the authentic teaching of Christ. Against an affirmative answer to this question there are two main arguments. (1) It is urged that in both passages of Matthew (v. 32. xix. 3 ff) the words under discussion are at variance with the context and are therefore shown to be an unwarranted addition of the Evangelist himself. (a) It is said Christ is represented as laying down a stricter and higher enactment than Moses, whereas, if these words are authentic, His teaching is on a level with that of Moses. To this argument a two-fold reply can be given. First, the version of Moses' enactment given in the context allows divorce without restriction. 'Moses suffered to write a bill of divorcement and to put her away.' In contrast to this version of Moses' law Christ is represented by Matthew as limiting the liberty of divorce to one particular cause. Secondly, when we turn to the passage in Deuteronomy, we see that the words 'because he finds some unseemly thing in her' allow a wide latitude as to the cause justifying divorce. Christ then appears in place of the wide latitude allowed by Moses to substitute His own requirement that there shall be no divorce of a wife except it be for fornication, that is, according to the common interpretation, adultery. If it is objected, as it sometimes is objected, that Christ thus simply agrees with the School of Shammai, the stricter School among His contemporaries, the answer is simple. Why should he go beyond that School, if He considered that School right? (b) Again it is argued that in the succeeding context Matthew represents the disciples as saying 'If the case of the man is so with his wife, it is not expedient to marry,' and that the disciples could not have said this if Christ's teaching did not go beyond the teaching of Shammai, which had been familiar to them all their lives. But it is absurd to regard the disciples as strictly logical and consistent persons who always weighed their words. The exclamation is a perfectly natural one. The solemnity with which their Master spoke of the marriage tie brought home to them with new vividness a sense of its inviolable character. On the spur of the moment they are represented as blurting out a thought which

flashed into their minds. Their exclamation is quite parallel to many other sayings, ill-considered but wholly natural, to which they are described in the Gospels as giving utterance. The objection, therefore, that the words in question are inconsistent with the context does not appear to bear examination. (2) It is urged that these words are an editorial addition made by Matthew and cannot therefore be regarded as preserving the authentic teaching of Christ. In xix. 3, Matthew is, as we saw, following Mark as his authority. He makes two additions, 'for every cause' (v. 3) and 'except for fornication' (v. 9), of which additions the former prepares the way for the latter. We certainly conclude from a comparative study of Matthew and Mark that it is quite in Matthew's way to modify his authority in accordance with his own views. That here the words 'except for fornication' are an editorial addition of Matthew seems to me as certain as any conclusion of literary criticism can be. The case of Matthew v. 32 is different. Here Matthew does not depend on Luke, as in xix. 3 ff he depends on Mark. Both Matthew and Luke depend on a common source, Q, which itself does not now survive. It is quite possible, therefore, that Luke found the words 'saving for the cause of fornication' in Q, but omitted them in his Gospel, and that Matthew found these words in Q, and retained them in his Gospel, and further that, finding them in Q, he inserted them also in the other passage of his Gospel (xix. 9), which deals with the same subject of divorce, and which, as we saw, he took from Mark. "This appears to be a perfectly legitimate interpretation of the evidence. On the other hand it may be contended with some plausibility that, if Matthew himself inserted them in xix. 9, there is a presumption that he also himself inserted them in v. 32; and again that it is easier to suppose that Matthew himself added them in v. 32 than to suppose that Luke found them in his source—Q—and deliberately omitted them. The conclusion at which I arrive is that it is quite possible that the words 'saving for the cause of fornication' had a place in Q, but that with our present knowledge a certain verdict is impossible. Let us then for the sake of argument assume that the words in question had no place in Q any more than in Mark, but that Matthew himself added them in v. 32 as well as in xix. 9. Are we justified in drawing the inference that they do not represent the authentic teaching of Christ? It is now rather the fashion among critics to maintain that Matthew was a Jew enslaved to Rabbinic notions as to the permanent sovereignty of the law, and that therefore he himself inserted the qualifying clause both in v. 32, and in xix. 9, from a desire to guard against Christ being represented as in conflict with the law in regard to divorce. To this position there is a two-fold answer. The idea of the inflexibility of the law is by no means the peculiar possession of Matthew. It is not he alone who presents it as the teaching of Christ. Luke, who apparently wrote for Gentiles, records the saying 'It is easier for heaven and earth to pass away than for one tittle of the law to fail.' As this saying recorded by Luke is found also (in a somewhat different form) in Matthew v. 18, it is a legitimate inference that both Matthew and Luke derived it from Q. (2) It cannot be denied that in both passages Matthew explicitly represents Christ as setting His own teaching as to divorce in strong contrast to that of the law. It seems impossible therefore to argue that Matthew added the qualifying clause with the express purpose of representing Christ's teaching on divorce as coinciding with that of the law. The alleged motive, therefore, for Matthew's addition breaks down, as it seems to me, on examination. Does there remain any ground on which we are justified in saying with anything like certainty that the qualifying clause added by Matthew does not represent Christ's authentic teaching? We are very much in the dark as to the transmission of Christ's sayings in the earliest days, that is, before the Gospels were written. Many persons besides those

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"who drew up Mark and Q must have remembered and handed down Christ's words. There must have been many lines of tradition. If, then, Matthew did not find the qualifying clause in Q, he may himself have added it because it came to him by some trustworthy report of Christ's sayings independent of the two sources, Mark and Q, which were his main authorities. The clause may represent the custom and teaching of the Church, probably a Palestinian church, of which he was a member; and this custom and teaching may have been based on a trustworthy tradition of Christ's words. At least in the present state of our knowledge we are not justified, I submit, in coming to any certain conclusion. We are now in a position to sum up. According to the three earliest witnesses—Mark, Luke's version of Q, and St. Paul (the earliest of all)—Christ taught the absolute indissolubility of marriage. Full weight must be allowed to this evidence. It is a strong argument for the conclusion that Christ taught that marriage cannot be dissolved for any reason. Matthew, however, adds in two passages the excepting clause, 'saving for the cause of fornication,' except it be for fornication.' It cannot be certainly decided whether Matthew found this excepting clause in Q, or whether he himself added it in his editing of both sources. In the latter case, though he may have added it simply to make Christ's teaching harmonize with his own ideas, yet it may have reached him through some independent and trustworthy report of Christ's words. Whatever grounds for hesitation there may be, the evidence available does not appear to justify any positive assertion. Two further remarks must be added. They are these: (1) It is an uncertain though probable inference from St. Matthew xix. 9 (if we take the words as they stand), that Christ meant to permit the husband who has put away his wife for fornication or adultery to marry again. (2) The passage does not deal with the case of a wife whose husband is guilty of adultery. While much remains uncertain as to the teaching of Christ in regard to divorce, one conclusion is absolutely beyond doubt. There is no version of Christ's teaching, and no interpretation of any version of Christ's teaching, which does not forbid divorce except on the one and only ground of adultery. Christ insists on the doctrine that man and wife are 'one flesh.' It is evident that adultery invades that 'oneness' (comp. 1 Corinthians vi. 16)" (the passage about "He that is joined to a harlot is one flesh"). "We may add that the primary object of marriage may be defined as the propagation of the race under the assured condition of an uncontaminated family life. Adultery frustrates the primary object of marriage. No other reason which can be urged for divorce falls under the same category as adultery. It stands alone. Other reasons which are put forward as grounds for divorce, e.g., long continued desertion, insanity pronounced incurable, violent cruelty, penal servitude for a long period, produce hard cases. But hard cases make bad laws. The price paid for giving relief to individuals would be, I submit, the greatest injury to the community as a whole, that is, involving the marriage bond in uncertainty and undermining the respect in which marriage is held as a life-long covenant. The point, however, on which I am now concerned to lay stress is this, that without controversy, if Christ's teaching allows divorce followed by re-marriage on the ground of adultery, it forbids divorce on any other ground whatever."

23,094. May I just ask you two questions of explanation before I leave it to others to ask about. You said at the bottom of page 11, "The primary object of marriage may be defined as the propagation of the race under the assured condition of an uncontaminated family life." Is not also one of the great objects the social union of the two people and the life together, apart from the question of propagation?—Certainly, but my word was the "primary" object of marriage.

23,095. But that is not always the case. There might be cases where people are past the bearing age, where they marry purely and simply from the point of

view of mutual society?—Certainly, but when we look at marriage as a whole then we must say that the primary object of marriage is the continuation of the race.

23,096. I daresay, but there are many cases in which it would not be so?—Certainly.

23,097. Why should you then confine the entire frustration of the object of marriage to the one case of adultery? Why does not the complete frustration of the object of marriage arise when one person permanently and wilfully and continuously deserts the other?—I draw a distinction between the primary object of marriage and the primary object of the marriage of particular persons. Particular persons may marry with whom the primary object to marriage cannot be attained, but I think that does not alter what the primary object of marriage in itself is, the propagation of the race.

23,098. I do not quite see (with the greatest possible deference) why you should accept adultery as such a frustration of the primary object of marriage that nothing else can compare with it. I am suggesting this only, that if one person persistently refused to have anything to do with the other and left them absolutely there was far more frustration than if on one occasion (we will say in the case of drunkenness or something of the kind) an adulterous intercourse had taken place with someone else?—But in all those cases is it not so that there may be a reversal? The wrong may be righted in the case of desertion or in the case of drunkenness; but the wrong once done in adultery is a permanent wrong.

23,099. Suppose, for instance, you had an absolute case of incurable insanity which could not possibly allow the marriage to continue?—I should venture to say that there are two considerations with regard to that case. First of all, science is always advancing, and what may be pronounced incurable to-day will not be pronounced incurable to-morrow; and, secondly, I should dwell on the position of persons who were becoming conscious of a tendency to lunacy, or were fancying that they were becoming liable to that tendency; would not it aggravate the evil to an incredible extent if they had to look forward to their lunacy involving the loss of the wife?

23,100. Might I suggest that the conclusion that you reach is not giving what some people have suggested to us as the weight to these other causes that entirely frustrate marriage, and that the conclusion you reach is really derived from the limitation you impose on the Scriptural text?—I am afraid I do not quite catch the question.

23,001. We have had it presented to us by many witnesses that some of these causes that I have referred to are as great, if not a greater, frustration of the marriage tie than, for instance, a single act of adultery. Might not I ask whether you do not think that in taking the opposite view to that you are largely influenced by a construction placed on the text of Scripture?—No doubt I am influenced by that, but I think I am also influenced by general considerations as well. As I said at the beginning of my paper, I think the Christian view of a subject is determined by our Lord's teaching, and therefore it is necessary I should be influenced by passages of Scripture; but I think I should take larger considerations outside Scripture as well.

23,102. That leads me to one other point, which is on page 11: "While much remains uncertain as to the teaching of Christ with regard to divorce, one conclusion is absolutely beyond doubt"; and you then proceed to the paragraph that explains that. Might I ask you this, having regard to what you said in the early part of this proof, that we are relying upon the memory of writers years after the words were uttered, and that not all the writers are quite in accord; whether one is justified in saying with absolute certainty that the construction such as has been placed by some, and is placed by you, upon this teaching, is really right?—If I understand the question aright, you would ask whether it is not conceivable that other words may have been uttered by Christ which have not been recorded.

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23,103. That is one of the considerations; but one knows how fallible human memory is, and if one is right that the memory of man in oral tradition is based on writings, the first of which is some 30 or 40 years after the time when the words were spoken, and in St. Paul's case I forget how long you say—?—Some 25 years, I believe.

23,104. Well, what I mean is, if looked at from the human point of view, supposing you have words recorded 25 years after they are uttered, and there is doubt after as to whether all who record them are quite in agreement, is it safe to be so certain that you would not admit to your communion a person that differed? Is it safe to say you are sure that the results arrived at as to indissolubility, or as to indissolubility for one cause alone, are the real teaching? So absolutely certain, I mean, that one ought to pledge one's whole position to it?—I do not think in this case we can arrive, from the very nature of the case, at absolute certainty, but in all the greatest questions of human life we have to arrive at probable conclusions, and act on probable conclusions. That was the great teaching of Butler. And obviously, I think, we cannot get beyond results of high probability in these matters; we cannot arrive at mathematical certainty in these matters.

23,105. The difficulty I want to have assistance about is this: if you find that these words are, generally speaking, used in relation to particular disputes arising at the time, and not involving conditions that apply to the modern state of things, may not it be said that they ought to be read as only dealing with the particular question put, and not dealing with anything else except as indicative of principle?—I think in this case (as so often) Christ goes beyond the immediate question laid before Him, and lays down eternal principles—great principles—which go beyond the immediate circumstances about which He was interrogated. So I think it is here. He does not mention Shammai or Hillel, or any of the controversies of the time, but He speaks, I take it, of the great human relationship.

23,106. But still the question was put to him arising out of those particular controversies?—Yes.

23,107. In those days there could be practically no such conditions as arise in modern days of the absolute disappearance to other countries, and so on. It was not practicable in those days?—I should have thought that travel then occupied as large a part in human life as it has done at any time until our days. I should have thought it was quite possible for persons to go and bury themselves in Rome. I should have thought such a supposition as that is not alien to the conditions of that time.

23,108. You do not think it right to interpret these passages as referring to the general principle, but as admitting of exceptions which would include the great causes that render life of a married character impossible?—I cannot see, myself, when the words are absolute, as these words are, that we have any warrant to read any exceptions into them; it seems to me a distinct act of force to read exceptions into them. The words themselves, as far as I can construe them, give no warrant for any exceptions.

(Chairman.) Thank you; I have exhausted all the proof you have been good enough to give us.

23,109. (Lord Guthrie.) My Lord, in the present state of the authorities, would you think it necessary, on Testament grounds, to repeal the 1857 Act, which limits the right of divorce to the exception of Matthew?—I am under the impression that that is hardly a matter of practical politics.

23,110. It is before the Commission. It has been proposed by the most eminent authorities, ecclesiastical and civil, Catholic and Protestant, in the witness-box here?—I thought the terms of reference were on amendment. I have not considered that question; it has not appeared to me a practical question, and I have not considered it.

23,111. And you are not prepared to give an answer?—I am not prepared to give an answer.

23,112. But you adhere to the words used in your proof at the bottom of page 10 and the top of page 11, where you say, referring to the different manuscripts,

"In the present state of our knowledge we are not justified, I submit, in coming to any certain conclusion"?

—Those words have nothing whatever to do with manuscripts; I had not manuscripts in my mind then.

23,113. Would you kindly explain? Do you limit those words in any way in their application, or do they apply to the question which is before us of continuing divorce for adultery or extending it to other causes?—The words apply to the question of the limiting clause and its history.

23,114. The limiting clause in St. Matthew?—In St. Matthew, and its history.

23,115. They would apply to the question whether divorce for adultery is consistent with New Testament principles?—Yes. May I make it quite plain? What I feel is uncertain is whether these words occur in the source which is called "Q" or whether they were added by St. Matthew out of his own mind; and in the latter case whether they represent anything which our Lord said. Those are questions to which I feel our present knowledge does not enable us to give an absolute answer.

23,116. If it be the fact, Bishop, that they occurred in the source "Q" then you take them as having been said by the Master?—We get back to two original sources, according to our present analysis, Mark and "Q." We cannot get behind these and we must take them as an approximately absolute standard of what our Lord said.

23,117. Then may I modify my question in this way. If they did occur in the source "Q" we may say there is reasonable certainty that they were uttered by Christ?—Yes, as far as we can possibly go back.

23,118. If they did not occur in that source, but were inserted by St. Matthew or some other contemporary, would you agree that they are indicative of the views and the usage of the Christian Church at the time?—I should think that is a very probable supposition.

23,119. You have said, Bishop, that Christ's teaching forbids divorce except for adultery; that is to say, the words which we have reported by the Gospels?—Yes.

23,120. Is it your view that that implies that in no circumstances can divorce be permitted in a Christian State? Does that follow necessarily from the acceptance of your proposition?—So far as the State bases its teaching on the recorded teaching of Christ, I should say it is impossible for a Christian State to go outside that one qualification—that one condition.

23,121. Then of course that means that with regard to none of Christ's general statements can any exceptions be assumed?—I think we must have very good grounds for allowing any exception.

23,122. I quite admit that. You do not assent to the proposition, then, that in the case of none of Christ's general statements or prohibitions can any exception be assumed; that in none of Christ's prohibitions can any exception be assumed. You do not assent to that?—No; I think there are different characters of prohibitions.

23,123. Quite. You said Christ so often goes beyond the immediate question put before Him. I suppose His view upon war and oaths would be an illustration of that?—There was no specific question put to Him in those cases, I think.

23,124. Well, apart from inquiry, there were questions which He had to deal with?—Yes.

23,125. And He enunciated great general principles?—Yes.

23,126. And you said He enunciated great general principles (you, in fact, used the expression legislation) about divorce. Why in the cases I have instanced to you His enunciations of great general principles must be qualified (unless we take the view of the Quakers), should not the same qualifying process be adopted with regard to His enunciations of great general principles with regard to marriage and divorce?—According to the teaching on which any legislation would be based; that is to say, the teaching of Matthew as a record of our Lord's teaching, there is an exception; and it seems to me that the record of one possible exception shows that in our Lord's teaching there could be no other exceptions. If you specifically lay

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down an exception it is clear that that is the only exception that you have in your mind.

23,127. I must ask you about that. Assume as a result of the best critical view of the present day (British and foreign) that these words were not uttered by Christ, how do you then differentiate the case of divorce from the case of war, litigation, or doing obeisance to authorities?—Myself, I think we are not in a position to accept the position which you indicate. I think we have these words in the Gospels which must be our basis for any legislation; therefore, for legislative purposes—for basing any conclusions of that kind on the record of our Lord's words—I should not feel able to adopt a position laid down by the critics whom you speak of.

23,128. You think for legislative purposes we must take those words as said by Christ?—We must take, I think, the record we have in the Gospels.

23,129. Even although the present critical opinion is that these words have been inserted by a process of editing?—It appears to me that there are fashions in criticism, and that fashions pass away; and it seems to me to be very dangerous to base far-reaching conclusions on critical positions which have only been taken up within quite the last few years, and may within quite a few years pass away.

23,130. Then, Bishop, assuming that the words must be taken, is it not a view which seems to you reasonable that Christ, looking to what was put to Him, may have used that as a shorthand way of expressing assent to the School of Shammai; namely, that for nothing except grave moral fault shall there be divorce?—Our Lord's answer, if we take the form given by St. Matthew, does coincide, I think entirely, with the School of Shammai.

23,131. But if it coincides with the School of Shammai and is not limited—the School of Shammai, I understand, does not limit divorce to adultery, but limits it to any grave moral fault—at least many authorities so put it?—I am afraid I am not a Rabbinic scholar and I cannot speak with any clear authority on those subjects; but my belief is that the School of Shammai allowed divorce only for unchastity, and certainly if the School of Shammai allowed any wider ground for divorce then I think our Lord diverged from it.

23,132. Why do you think that, Bishop?—From the recorded words, because *porneia* (unchastity) is the one exception which is given in St. Matthew.

23,133. May I just ask you whether in matters of this kind we apply the principle which we certainly apply every day in the courts, and it is this: when there is a question from some eminent judge reported in the law books, you know (some great chancellor or somebody) we always hold that if that statement was made with reference to a particular question brought before him it must be interpreted with reference to that question, and unless expressly so stated it cannot be held to decide any question not before him, nor, however general its terms, to exclude exceptions which he had no occasion to consider. Is not that a principle which you apply in ecclesiastical matters. We apply it every day?—I think that is a legal rather than a literary maxim, and that we should treat our Lord's words rather as literature than as codified law.

23,134. (Chairman.) Would you just let me remind his Lordship there was a point you said you wanted to deal with about the Pauline privilege which affects Lord Guthrie's country. Perhaps before he and the others finish you would like to say what you have to say about that?—Certainly, my Lord; should I take that point now?

23,135. I thought so, before Lord Guthrie finished?—I do not know whether it would be more convenient that any question should be asked me.

(Chairman.) Perhaps Lord Guthrie will put it.

23,136. (Lord Guthrie.) Yes. You referred to St. Paul's views, Bishop. Is that the passage that is usually called the Pauline privilege or the Pauline exception, in the 1st Corinthians, 7th chapter?—Yes. I did not refer to that, because in that passage no reference is made to Christ's teaching, and therefore it falls outside the scope of the paper I drew up.

23,137. In short, in the 10th verse of that 7th chapter, St. Paul speaks first with reference to Christ's teaching, and then he goes on to say, "I, not the Lord"?—Yes.

23,138. Now take the second set of statements which you find referred to where he is speaking, as it were, at his own hand. Does not he at his own hand introduce what is a manifest exception to the general statement made by Christ as to indissolubility, implying, therefore, that he necessarily assumed that Christ did not exclude such exceptions as might be necessary from time to time?—I think not, when the passage is examined. May I read the passage? It would be rather clearer if I might read it. I have my Greek Testament before me, so I am translating rather than reading from an English version: "But if the unbelieving husband depart, let him depart. The brother or the sister hath not been made a slave in such cases, but it is in peace that God hath called you. For how knowest thou, O wife, whether thou shalt save thy husband? or how knowest thou, O husband, whether thou shalt save thy wife?" I would point out that the sequence of clauses is quite clear, and that if we connect the slavery or the bondage with the case of the wife who is deserted by an unbelieving husband, then, following the connection of the clauses—"the brother is not enslaved in such matters," "but God hath called us in peace," "For how knowest thou?"—all the clauses are connected together. St. Paul speaks of the man as still husband and the woman as still wife; and, further, holds out the hope that the believing wife will save her husband—cause the husband to be a Christian—and that the believing husband will save the wife—cause her to be a Christian. Now that would be quite impossible if there was a second marriage. I hold, therefore, that St. Paul's own words in the context show that in the phrase "The brother or the sister is not in bondage," or "hath not been made a slave," there can be no reference to freedom to make a second marriage.

23,139. Does St. Paul say anything more than any Christian man would say in the particular case? Has that anything to do with a case where, having got all the admonitions and injunctions and orders they could get, it appears that the adulterous wife, or deserting wife, has set up a separate establishment and is bearing children to another man, and that the husband so left has not the gift of continence?—This is a special case, is it not, of a Christian who has become converted and who is married to a person who has continued in heathenism. That is the case that St. Paul is considering at this point, I think.

23,140. Where does he say that, after every attempt has been made and the parties cannot live alone, not having the gift of continence, that they should be forbidden to re-marry?—That is where he is speaking to the unmarried and widows in verses 8 and 9.

23,141. Certainly. "It is good for them to abide, but if they have not continence let them marry, for it is better to marry than to burn"?—But he is speaking there to persons who are unmarried and to widows; he is not speaking to those who are married already.

23,142. No, and he is doing what every Christian man would do, attempting to prevent divorce—a most hateful thing—by every possible means; but if the question was put either to Christ or to St. Paul that I have put to you, is there any evidence whatever to show that either of them would have prevented re-marriage?—I think there is no evidence to show they would; but we are not permitted to assume that they taught what they did not teach.

23,143. Then does it not come to this: that there is no certainty what either of them would have said, to put it at the very lowest, if the case had been put to them?—I think that is not a question we can answer, because the question was not put. We are not gifted with the spirit of prophecy as to the past.

23,144. And it is a matter, therefore, of opinion, not of certainty, what answer either would have given?—We must judge by the words which are recorded as theirs.

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23,145. And the words which are recorded are words not used with reference to that particular question?—That question was not raised.

23,146. There is just one thing I omitted to ask you, Bishop. The views you have expressed as to the way in which we are entitled to deal with the New Testament writings; may I say that they are what are ordinarily associated (I do not mean it offensively in the least, for I sympathise with them) with the idea of the Higher Criticism?—The views I have expressed?

23,147. Yes. Might I add this, Bishop: in the sense that you feel entitled, as all scholars now do, to deal with these writings in a way that the fathers and the great divines of the English and other Churches in past centuries would not have felt entitled to do?—Certainly I feel we must deal with these writings according to critical methods.

23,148. You used the expression yourself that there is a margin in the Gospels where there may be error. That would not have been assented to by our forefathers?—No.

23,149. (*Sir Lewis Dibdin.*) Just a question on this question of Pauline privilege that Lord Guthrie has dealt with. The question is not, is it, whether you read in this passage anything that forbids re-marriage; but the question, as I understand, is whether this passage must be read as authorising re-marriage?—My position is that the context in verse 16 shows that St. Paul had not re-marriage in mind when he said, “οὐ δεδούλωται ὁ ἀδελφός”—“the brother is not under bondage.”

23,150. And then the question put by Lord Guthrie is, What is there in that passage that forbids re-marriage; but you do not say that there is anything that forbids re-marriage, or deals with the subject at all?—My position is that St. Paul does forbid re-marriage, because he still speaks of the heathen spouse who has gone away as husband or wife.

23,151. That is the implication that you draw from the passage?—As far as the horizon of St. Paul extends the marriage is still good; that is my point.

23,152. I quite follow, Bishop; but is there anything in the passage that authorises re-marriage?—Certainly not.

23,153. But that is surely the point with which this passage is adduced by those who think it is important to the Pauline privilege. It is said, “Here is an instance where St. Paul has allowed re-marriage; if in one case why not in another?” Your view seems to be quite inconsistent with the premises on which that argument rests?—Entirely, I think the whole idea of the so-called Pauline privilege is a mistake, and I think it is shown to be a mistake by the context in verse 16.

23,154. Taking your evidence in the order in which you gave it; may I ask you about the passage in St. Mark? It was rather suggested to you—I think by Lord Gorell—that the passage in St. Mark, the 10th chapter, ought to be read with reference to the question which was in the people’s minds who were asking our Lord questions, and that they had before their minds the rule of the law which allowed divorce without any legal proceeding at all—the giving of the writing of divorcement; and it was suggested to you whether there was anything in this passage which showed that our Lord’s answer referred to anything more than that; in other words, whether it had any reference to proceedings for divorce at all. I daresay I am quite wrong, but did the Jewish law allow the wife to give a writing of divorce to her husband as well as the husband to the wife?—There were one or two cases; Herodias was one case, and I think there was the case of another woman in the Herodian family—Salome, I think her name was. But I imagine the cases were so few that you could count them on your fingers.

23,155. Such a thing was known, but was very rare?—It was known, but was extremely rare. That is to the best of my knowledge.

23,156. Then, passing to the passage in the 1st Corinthians, vii. and 10th verse; St. Paul there

refers to separation, and it is suggested that that means separation without cause—the husband departing from the wife; but there is nothing said, is there, about its being without cause? It is simply if he departs from the wife, whether for good cause or bad cause?—Certainly. We must not read into the words what is not there; we must take the words as we find them.

23,157. But we should be reading in if we read the words “without cause”?—Certainly.

23,158. And on the point of translating the circumstances of that time to this time. Desertion was common enough, was it not, in those days, with the Roman Empire divided into provinces, some of them very remote from the capital, and particularly with armies going into remote parts of the empire. Nothing was easier than for a husband to disappear, either intentionally or unintentionally?—I should have supposed that was a thing that often happened.

23,159. And I suppose, until quite modern days of railway travel, the means of travel were carried to a far greater degree of perfection than ever afterwards until quite recent days?—I should have imagined the Roman roads almost anticipated modern facilities for travel.

23,160. So that the parallel between those times and ours was very fairly close in that respect?—I think in that respect, certainly.

23,161. You were rather pressed as to how far we were entitled to act on the view of the words of the New Testament on the ground of the circumstances under which it has come down to us. But would not that difficulty, if it be a difficulty, apply to every part of the teaching in the New Testament? We are under the same circumstances of difficulty in arriving at the text of any part of our Lord’s teaching, are we not?—The conditions, of course, are absolutely the same throughout the Gospels.

23,162. And I suppose there is no subject in the world on which more mind and more learning have been spent than the attempt to arrive at the real text of the New Testament. Is not that so?—Enormous pains have been taken, and in our generation.

23,163. And the means of arriving at that text are very remarkably abundant, are they not? Hundreds of manuscripts, a great many versions, an enormous number of extracts from various early writers; and it is the converging influence of all those which has produced the modern critical views of the text, is it not?—Yes, modern critical views take into consideration those three sources of information which you have referred to, manuscripts, versions, and quotations.

23,164. Would you say that, while it would be hazardous to found a decisive argument (in many cases, at any rate) on a single word, that the result of biblical criticism has been to ascertain, with such an amount of certainty that we can act upon it, what is the main scope of whole passages in the text?—You have passed away now from textual criticism to general criticism, have you not?

23,165. Yes?—Yes, I think that is probably a statement of the modern position. I think we should agree now not to lay an absolute burden on a single word, but we should be desirous of apprehending the teaching of the whole passage.

23,166. And upon that question your opinion is clear that we have the proposition that our Lord intended to lay down sufficiently definitely before us for us to act on its meaning?—We have these three sources, quite independent primary sources, namely, Mark, Q, and St. Paul; and they converge in supporting the general teaching of our Lord which I have indicated.

23,167. Now I wanted to ask you a question with regard to the way we ought to regard our Lord’s words, supposing they are what the text leads us to suppose they were. It is said that we are to take the general proposition, but we are not to read that as what in logic we should call an exclusive proposition; that we are not to read it as if it necessarily had no exceptions. I think you have given your answer to that, that where you have an exception it is unreasonable to suppose that there are other exceptions which

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are not stated. The fact that one exception is stated shows that what exceptions existed it was considered necessary to indicate?—Yes.

23,168. Now supposing that exception does not exist. Suppose we take out the reference to fornication in that clause. Then it is suggested: Why is this proposition to be taken as of a more binding character or more formally legislative than other propositions of our Lord? But is there not this difference? A particular question is addressed here to our Lord, and He is asked for His direction as to what people are to do with reference to marriage?—Yes.

23,169. And that, if my memory serves me, does not apply to any of the other cases, does it?—I think I noticed at the time that they are not given in answer to any specific question.

23,170. That occurred to me, too?—And I would also add that I think our Lord's teaching must be regarded in view of the later teaching of the Church (the Society) which sprang from His ministry.

23,171. Now, my Lord, I only want to ask you one other practical question, which I confess I feel more at home with than on questions of Biblical criticism, and that is with regard to the Divorce Act of 1857. The question before us now is not really whether if we had been alive in 1857 we should have voted for that Bill, and I understand your Lordship to say that it is a question you do not care to express an opinion upon?—It is a subject I have not considered with that fullness and adequacy which I should wish to have done before expressing an opinion.

23,172. As we were not in active life, at all events, at that date, it is not a very practical question now; but is your Lordship—

(*Chairman.*) It is quite open to the terms of the Commission.

(*Sir Lewis Dibdin.*) It is not open now to have not passed the Act of 1857.

(*Chairman.*) No; the repeal of it.

23,173. (*Sir Lewis Dibdin.*) Yes, I am coming to that. I am speaking of what we should have done if we had been alive in 1857. It is not now a practical question; it was done. But what would your Lordship's view be with regard to action now? You have given us your evidence of the doubtfulness, at all events, of the text with regard to the exception of adultery. The Act being there, and things being as they are now, would your Lordship advise the repeal of that Act?—That is just the question which I do not feel prepared to answer with absolute precision, because it appeared to me that it was not a part of practical politics.

23,174. I do not want to press you on anything you do not want to answer, but when you say not a part of practical politics you mean it is inconceivable that the Act would be repealed?—I mean the Act having been passed, and having taken the place it has done in English life, I think there are such grave difficulties in repealing it that I do not think it is practically possible at the moment. That is the view I imagine most people take, and the view that has come home to me, so that I have not deliberately thought out the question whether the Act can be repealed or not.

23,175. (*Judge Tindal Atkinson.*) I do not think I quite clearly understand from you, my Lord, whether, if the Gospel according to St. Matthew stood alone, you would under those circumstances think that adultery might be made a ground for the dissolution of the marriage. I do not know whether you mean in that case that adultery would form a good ground for divorce?—Yes.

23,176. You think it would?—Yes; assuming that the interpretation of the word is "adultery." In my paper I have shown that there is some doubt about it; but assuming that interpretation, then I should say—

23,177. I rather wanted to have your interpretation. What is the conclusion you have formed on the whole as to whether St. Matthew did allow an exception as giving a right to divorce?—I think St. Matthew did allow an exception; or I would rather say, did represent Christ as allowing an exception.

23,178. Now at page 4 you refer to 1st Corinthians. The words are, "Not I but the Lord. Let not the wife depart from her husband; but and if she

"depart let her remain unmarried." Would that apply to a case where a man was living in the same house with his wife with a mistress? Would St. Paul then have intended to say that the wife should not depart from her husband?—I am not prepared to say. St. Paul has not expressed himself, and I am not prepared to put words in his mouth in view of such a case as that. It is impossible to answer the question.

23,179. Is it conceivable he could have intended to lay down the position that the wife should not depart from her husband under such circumstances?—Well, instinct may lead one to say that St. Paul would have said this or that, but I am not prepared to put the words into St. Paul's mouth.

23,180. Then take the other part—the husband leave not nor send away his wife. Supposing the wife is living in the same house in adultery with a paramour, does St. Paul mean that the husband is to be content to remain with her?—If we take St. Matthew's teaching, St. Paul would have had our Lord's imprimatur for saying that in such a case he was not under such a compulsion; but St. Paul has not expressed himself on those particular matters, and I am not prepared to put such words into St. Paul's mouth.

23,181. Supposing our Lord intended to lay down a law which would be applicable to all ages, can it be supposed, if the strict observation of that law necessarily led to immorality, that our Saviour ever intended to lay down any such law?—Taking immorality in the widest sense, the increase of evil as a whole in the world, I should say clearly that our Lord's teaching could not have had such a result as that; could not have aimed at such a result as that.

23,182. But if the strict observance of the law is laid down forbidding all divorce would not that necessarily lead to immorality? Can it be supposed that our Saviour would have laid down a law that would have that effect?—It might increase immorality in particular cases; but the question is whether the strict law of divorce would not, taking the whole range of society, attain to a higher level. The strict view may lead to immorality in particular cases, but taking a wide view of the morality of society, I believe it attains to a higher standard.

23,183. (*Chairman.*) I just want to ask one question that arises from what Judge Tindal Atkinson asked. Assuming that adultery is allowed as a ground for divorce, is it your view that both sexes should be placed on an equality exactly with regard to that?—Yes.

23,184. You are aware that at present there is a difference?—Yes.

23,185. Imposing on the wife a further proof?—Yes. That would follow from what I have tried to say in the paper, that adultery, and adultery only, touches the central point, as it were, of the marriage relation.

23,186. That would be equally true if the adultery were the one side or the other?—Yes.

23,187. And equally true whether it was on one occasion or more?—Yes.

23,188. One other matter. Can you tell me how many authoritative manuscripts—that are considered authoritative, I mean—there are?—I could not in the least speak off-hand; and one must always bear in mind that we must weigh, rather than count, our witnesses in the way of manuscripts.

23,189. That is what made me put in the word authoritative. I mean those which are regarded as worthy of the greatest trust. Do you know how many there are?—I am speaking quite roughly and popularly. I should say what one would call primary manuscripts you might count on the fingers of both hands; but it is always possible that in an inferior manuscript you may get a representation of an older text.

23,190. You cannot give us at the moment exactly the number or the description of those which are considered the most authoritative?—They fall under ten, I think, but there are so many considerations involved that any brief statement such as that is really misleading. I should not wish it to go abroad for a moment that I

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had said that there were ten manuscripts on which the authority of the New Testament text depended, because the text depends upon an elaborate comparison of a large number of authorities and the comparative study of a large number of authorities; and any popular statement in a single sentence of the matter is bound to be misleading.

23,191. I only wanted to get a short statement of the number of authorities to which you refer?—It would, I am afraid, require a lecture on textual criticism, to answer the question with any degree of satisfactoriness.

23,192. I was looking, while your examination was going on, at a number of leading manuscripts mentioned

by Mr. Watkins, and there are four or five—the uncial?—Yes; but one must consider that the early versions are as decisive, or nearly as decisive, evidence as the manuscripts.

23,193. Versions from something else, do you mean?—Versions from the Greek into Syriac or Latin or Egyptian.

23,194. Is this a matter that has been a subject of special study with you?—To some extent. I have written to some extent on the subject.

(Chairman.) May I thank you, my Lord, very much on behalf of the Commissioners for your evidence, and the assistance you have given us.

(Witness.) Thank you for your patience, my Lord.

The Rev. Professor WILLIAM PATERSON PATERSON, D.D., called and examined.

23,195. (Chairman.) You are a doctor of divinity and professor?—Professor of divinity in the University of Edinburgh.

23,196. And minister of the Church of Scotland?—An ordained minister of the Church of Scotland.

23,197. You have been good enough to consider the question of the grounds of divorce, with special reference to the Biblical aspects of the subject and its treatment in the literature of Christian ethics, and you have prepared a proof to present the subject of your evidence to the Commissioners?—Yes.

23,198. I should like to follow the course adopted by the last witness and ask you if you would kindly read your proof, subject to our asking questions as we go upon it, if that would meet with your approval?—Yes, my Lord. I may say in explanation that my subject is systematic theology; that includes Christian doctrine and Christian ethics. I do not speak as an expert on textual criticism, but it is necessary for the cultivation of my branch of theology that I should be able to control the historical data; consequently, with regard to my paper there is nothing of special value in the examination of the exegetical material, nor do I claim to do more than control the patristic material. What I am specially interested in is the treatment of the subject by the Reformers and the history of the subject in the Church of Scotland. Then I attach importance to the treatment of the subject in what is called Christian Ethics, because there is a difference between Biblical exegesis and Christian Ethics. Exegesis is concerned with fixing the literal sense of scripture; while Christian Ethics has a semi-philosophical character and attempts to bring Christian principles to bear upon concrete questions of life, and, therefore, I think it of some importance that the attention of the Commission should be directed to this branch of theology.

23,199. Then I may take it that your proof is based on the two questions that you have just indicated?—Well, the parts of my evidence I consider of most importance are with regard to the Reformation and the condition of opinion in the Church of Scotland at the present time, and also the recent treatment of the subject in the discipline of the Christian Ethics. But the Biblical part is very summarily stated. I have put it in the form of propositions, and I will read them, omitting the notes. (1) “In Old Testament times a husband had the right to divorce his wife, but the practice was, to some extent, restricted and discouraged by law and prophecy.” (2) “The Deuteronic code, while recognising the husband’s right of divorce, declares it to be forfeited if the husband (a) had falsely accused his wife of ante-nuptial fornication (xxii. 13–19), or (b) had himself seduced her before marriage (28, 29).”

23,200. When the shorthand notes are transcribed may we have the references inserted?—Yes.

23,201. Then you need not read them out. [Note.—The right is pre-supposed in Deuteronomy, xxii. 19, 29, xxiv. 1–4; Leviticus, xxi. 7, 14, xxii. 13; Numbers, xxx. 9]—(3) “In Deuteronomy xxiv. 1–4 some check was placed on divorce by the provision that, in the event of a legally divorced wife contracting a second marriage, and being again divorced or widowed, the former husband and wife might not marry again.” I think we have here one of the recognised modern corrections of the older view. The older view was that Moses legislated

to the effect that a man might divorce his wife for this particular cause. It is now recognised, and it is a very old form of wording that goes back to the time of Hamurabbi, that the case is hypothetical. [Note.—The aim of this passage is, not to lay down the grounds of divorce, and the proper procedure, but to state a disability arising out of the existing (and recognised) practice. The whole case as stated to the end of v. 3 is hypothetical—if a man hath taken a wife, and she find no favour in his eyes, and he write her a bill of divorcement, &c. The intention was to deter a husband from acting thoughtlessly and impulsively in the matter of divorce. (Dillmann on Deuteronomy xxiv. 1–4.)] “(4) The later prophetic attitude is shown by Malachi, who condemned the divorce of a wife (apparently on the ground of the loss of youthful attractions) as an act of unfaithfulness which provoked the divine displeasure (ii. 14–16).” (5) “In the time of our Lord, it was in the power of a Jew to dismiss his wife at will—subject to the condition of giving her a bill of divorcement, and to marry again.” (6) “The existing practice was defended by the School of Hillel, which allowed divorce for any cause deemed by the husband sufficient, while the School of Shammai taught that the terms of the law (Ervath-dabar) only permitted it on the ground of lewd conduct.” I put in a supplemental paper with extracts from some sources.

23,202. Is that the print?—Yes, and I may refer here to one point. I am not a Rabbinical scholar, but I consulted the best edition of the Mishna in a Latin translation, and I find the opinion of Shammai is said there to be that no one shall divorce his wife unless he shall have found in her something scandalous (*quid inhonesti*), and I should say that the opinion expressed in the best commentaries is that Shammai did not limit divorce to adultery; any action of, say, a lewd kind, a disgraceful kind, on the part of the wife is sufficient. [Note.—In his account of the laws of Moses, Josephus says it is lawful for a man to divorce a wife for any cause whatever (Antiquities iv. 8). He himself divorced two wives—one on leaving Rome for Alexandria, a second because he was not pleased with her behaviour. (Life.) A woman, he states, could not divorce her husband according to the Jewish laws. (Antiquities xv. 7.)] I add a note on the Rabbinical interpretation of the law.

23,203. Would you like to take that as part of your proof?—Yes. Then with regard to the point as to whether the Jewish law allowed a woman to divorce her husband I may say that while there are one or two instances named, Josephus states explicitly that that is contrary to Jewish law and custom. It was an innovation. (7) “The teaching of Jesus on the subject of divorce and re-marriage is set forth in the parallel passages,” Mark x. 1–12; Matthew xix. 1–12; Matthew v. 31–2; Luke xvi. 18; 1 Corinthians vii. 10, 11.

23,204. Yes?—Then with regard to the passages in the Gospels I give an account of them, and I should like to say with regard to the critical question that there does not seem to be very much difficulty except with regard to Matthew xix. 9. There are different readings there, and I think I am justified in saying that in the opinion of the best authorities, supported by the best manuscript evidence, the latter

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clause of Matthew xix. 9, ought to be deleted: "He that marrieth her when she is putt away committeth adultery."

23,205. Those are the two omissions which I referred to when I was asking the last witness about omissions in some of the manuscripts. It is at pages 153-155 of Mr. Watkins on "Holy Matrimony." In both these, the Codex Sinaiticus and the Codex Bezae, these last words are omitted?—Yes.

23,206. That is to say, "He that marrieth her that is put away committeth adultery"?—Tischendorf omitted it, and also Wescott and Hort; and the revised version in the margin indicates doubt. I think it may be said that "He that marrieth her that is put away" is a later addition. I do not think the variations are very material with regard to the readings, though it is striking that Matthew xix. 9 appears with a number of variations and gives some colour to the suggestion that we really do not know what our Lord said—a suggestion which has been made. But I am of opinion that the differences are comparatively unimportant except for the case I have referred to. Luke xvi. v. 18, is to the same effect as Mark: "Every one that putteth away his wife and marrieth another committeth adultery, and he that marrieth one that is put away from a husband committeth adultery." Paul, reproducing the general teaching of Christ, says: "And unto the married I give charge, yet not not I, but the Lord, that the wife leave not her husband: but if and she depart, let her remain unmarried or be reconciled to her husband, and that the husband leave not his wife." Now the really important question that comes up here is whether the exception in Matthew is authentic. On the one side we have three important witnesses for the absolute statement of the Lord. We have Mark, which is the oldest source; we have Luke, and we have St. Paul, all testifying that our Lord declared that marriage is indissoluble. On the other hand we have these two passages in Matthew which allow divorce, which of course at that time involved the right of re-marriage—declaring that Christ allowed the exception of adultery; and the question that arises is whether this addition to Matthew is authentic. Well, I have studied these questions at different times, and I have now come to the belief that it is not authentic—that our Lord did not mention any qualification at all; and the reasons that I give are these. First, the general tenor of our Lord's teaching is against divorce for adultery. What I mean is this: our Lord taught the duty of the forgiveness of injuries. He taught that it was our duty to forgive those who have wronged us until seventy times seven, and I am, therefore, of opinion that it is not in the spirit of our Lord's teaching that He should have said that in this particular case—in the relation of a man to his wife—that one was to cease to forgive. It seems to me that the duty of forgiveness of injuries carries that implication. The second point, which I think is very important, is this, that the method of Jesus as seen in other passages of the Sermon on the Mount is to lay down absolute principles in the most stringent form and to ignore qualifying considerations. He said, "Swear not at all." He says: "And if any man would go to law with thee, and take away thy coat, let him have thy cloke also." "But whosoever smiteth thy right cheek, turn to him the other also." These are all stated without any qualifications, and I am inclined to think when He came in the same context to deal with the question of divorce that He said marriage is indissoluble. I think it is in line with the uncompromising and unqualified teaching of the Sermon on the Mount. The third consideration is that one can very well understand that if Jesus said marriage is indissoluble the Church at a later period would say: This is a hard saying; and that Matthew put in the obvious exception. My fourth consideration is that I think Matthew is an inferior authority on this point as compared with Mark and Luke. Mark and Luke say prohibition was absolute. Matthew says He allowed divorce, and here I borrow from the critical researches of recent times which show that at this point he is an inferior authority.

Firstly, in Matthew xix. we know where he gets the material from. He is borrowing it from Mark. It is known that Matthew had Mark before him—or an older form of Mark—when he was compiling his Gospel, and we know that in many passages he is taking material from Mark, and this is one of the cases where, according to the critics, he had Mark before him. But he did not find the exception in his Marcan source. Then with regard to the passage in the Sermon on the Mount we know what his source was. It was the so-called Logia or the Quelle, which was probably written by an apostle. Now Luke also used this Logia as well as Matthew, but Luke does not put in the exception and Matthew¹ does, and though it is not quite as certain, the probability is it was not in the Logia. So that in both cases we know what Matthew's two capital sources were, Mark and the Logia; and we know it was not in Mark and that probably it was not in the Logia. Therefore, the critical case against it is very strong. Now there is another consideration; that does not at all to my mind settle the question as to whether marriage is absolutely indissoluble. There are several other considerations to be taken into account. The first is that Jesus may very well have said that and have taken it for granted that divorce was to be allowed in the case of adultery. It may have gone without saying to Him, and that is the view which is taken, for example, by Professor Bernard Weiss, who is perhaps the most learned of the German exegetes—that our Lord took it for granted. The second consideration which, to my mind, is of great weight is this, that our Lord expected His Church and His followers to do a great deal of thinking for themselves. One of the mistakes that is made by uninstructed theologians is to suppose that we have in the Bible a law book—a cast-iron code in which everything is settled for us. A distinct feature of the Christian religion is that it is a religion of maxims which lays the responsibility on people of doing a lot of hard thinking as to how the principle works out in certain cases. That is the distinction between the Christian religion and, say, Mohammedanism and the Old Testament, and it is clear that we have much thinking to do in relating Christ's maxims to the concrete world. He says: "Swear not at all"; yet we require witnesses to take the oath in a court of law. We are told in the New Testament we are not to go to law with our brother, and I believe the Christian ideal is we should not go to law, and that we should suffer the spoiling of our goods gladly, but we have courts of law where people can go to redress their wrongs. And one might refer to the case of war. There is nothing more certain than that our Lord inculcated the principle of non-resistance, and yet we do take steps in practical life in self-defence. I mention that to illustrate our Lord laid down principles and put a good deal of responsibility on us in other cases in the way of thinking matters out and applying those principles. So I hold that the critical view does not at all dispose of the matter, and specially attach a great deal of importance to the view of Weiss, that he probably took it for granted, in the case of adultery and did not specify it. My own idea is that that was probably Matthew's view. I think it is very likely that Matthew and the other Jewish Christians were aware that this was taken for granted, and that Matthew, when he made his addition, only made quite explicit what every Jew had understood.

23,207. Is the reference to Weiss, *Matthaeus Evangelium*, page 163; is that the title of the book?—Yes. "While the above view has seemed probable to critics occupying different standpoints, it nevertheless goes counter to the theory of Scripture on which the Church has hitherto acted, viz., that the Gospel record is trustworthy when (as in the present case) the MSS. raise no grave doubts." "While St. Paul recalls the teaching of Jesus as to the indissolubility of marriage, he states that a Christian who has been deserted by an unbelieving spouse is not bound"—*δεσφύλαται*—"the natural meaning of which is that the believing spouse is free to contract another marriage," 1 Cor. vii. 15. I think that this passage

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taught that the Lord's teaching was indissolubility, but that an exception was to be allowed where an unbeliever deserted a Christian spouse.

23,208. Do you mean that it is Paul's thought that there was no absolute dissolubility laid down, but he thought there were cases where indissolubility did not apply?—Yes, the whole language seems to me to be meaningless unless it is: "Here is an exception which I, Paul, on my authority allow." Now I think that view derives a great deal of support if you compare 1 Corinthians vii. 39 and Romans vii. 2. St. Paul there says that the woman is bound to a husband while he liveth, but if he be dead she is no longer under the law of her husband. So then the Apostle says in another place she is bound to the husband and if he dies she is no longer under the rule of the husband; and if in this passage he says, "If the unbelieving depart the believer is not under bondage," it seems to me quite clear that he puts the deserted person on the same footing as a widow in the one case by "*dédérau*," not bound, and in the other *dedoulōrai*—not enslaved. To my mind this is a dissolution of the bond of marriage with permission to marry again. Now I am aware that there is a great deal of difference of opinion with regard to this among competent scholars, but still the majority of Protestant exegetes have taken that view, and it is a striking circumstance that the opinion of the Roman Catholic Church coincides with that of a very large body of Protestants, namely, that in this particular case the Apostle does allow dissolution of marriage *quoad vinculum*. They disagree as to how they work it out, but they agree it is dissolution *quoad vinculum*.

23,209. Then you come to some historical notes?—Yes.

23,210. Would you mind reading those?—" (1) The ante-Nicene Church emphasised the indissolubility of marriage—save for the cause of fornication, but there was difference of opinion as to whether the innocent party to a divorce might marry again." I think that is a broad statement which would be generally accepted.

23,211–12. Would you read the note to that?—"Now that the Scripture counsels marriage, and allows no release from the union, is expressly contained in the law, thou shalt not put away thy wife, except for the cause of fornication, and it regards as fornication the marriage of those separated while the other is alive. Clem. Alex. Strom. II., 23. Lactantius appears to allow the re-marriage of a husband who has divorced his wife for adultery (Inst., VI., 23). The Synod of Elvira (306 A.D.) threatened with excommunication any woman who, after divorcing her husband, should marry again. The Synod of Arles (314 A.D.) merely counsels the husband in like case to remain unmarried." In the print I have some additional quotations. Of course one could have multiplied the materials indefinitely, but it is enough that there was a difference of opinion in the pre-Nicene period. In general my view is that the first century was for the right of re-marriage after divorce; as witness Matthew on the one hand and Paul on the other in certain circumstances. In the second century the view with regard to the indissolubility of marriage was substituted for what I consider the first century view, and one reason I have for thinking it is this. One of the strongest witnesses against re-marriage after divorce is Hermas, author of the Pastor, and he declares definitely that a divorced person, husband or wife, innocent or guilty, may not re-marry. Now there is some difference of opinion as to the date of Hermas, and some would make him coincident almost with the first Gospel, but that was not the view of the late Bishop Lightfoot. He thought it was about the first half of the second century. Hermas professes to give revelations of mandates, and so on, received specially from heaven, and this prohibition of re-marriage was one of the revelations that came by an angel to him; and this suggests that Hermas was of opinion he was not expressing the view of the Apostolic Church, but was going on to propound and support a view that was comparatively recent.

23,213. Can you give us the reference?—It is in Watkins' book on "Holy Matrimony."

23,214. Then you proceed, "In opposition to the civil law—" ?—Then, my Lord, there is a point to which I attach some importance. It is mentioned in the supplemental print on page 3. Undoubtedly we do find a hardening or narrowing of opinion as compared with what I think had been the witness of the first century, and I think it is important to consider why it was that the opinion of many of the Fathers became so decided with regard to this prohibition of re-marriage after divorce. I am quite clear that there were three main reasons. The first was they lived at that time in the environment of a heathen society in which divorce was very prevalent and given for the most trivial causes, and I can readily understand that in such circumstances they put forward as one of the most distinct features of Christianity the inviolability of marriage, and that they exaggerated it. In a state of society where drunkenness is very rife there will always be a tendency to present total abstinence as the only true Christian attitude in the matter, and similarly I think the circumstances of heathenism drove the Fathers to exaggeration. The second point which has impressed me in the matter is this, that when you come down to the third and fourth centuries you find what I call a morbid view of marriage is taken. It is not good for man to marry, it interferes with his spiritual life; and if they took that general view with regard to one marriage you can quite understand how they would be extremely adverse to allowing a man who had already been married, and had divorced his wife, to contract another marriage. I give an extract on page 4 of the print from Athenagoras, which I think is very significant. "You would find many among us, both men and women, growing old unmarried, in the hope of living in closer communion with God. But if the remaining in virginity brings nearer to God, while the indulgence of carnal thought and desire lead away from Him, in those cases in which we shun the thoughts, much more do we reject the deeds. For we give heed—that a person should either remain as he was born or be content with one marriage; for a second marriage is only a specious adultery." Now there is some difference of opinion as to whether he is condemning all second marriages, but there is certainly the point of view that the celibate state is holier; if a man has been once married and lost his wife he should not marry again. Now people who lived in that world of ideas would naturally say in the case of a divorced man and wife: we do not approve of their having facilities for entering a second time into a union which at the best is only a second best. Then the third point is the influence of the sacramental idea. You find that very markedly in St. Augustine. It is very difficult to explain the conception of marriage as a sacrament. But when marriage was associated with baptism as a sacrament that carried with it the idea of indissolubility.

23,215. Then you have got on page 8 of your proof, paragraph 2, certain remarks on the opposition to the civil law of the Empire?—Well, I have not very much more, my Lord, to say with regard to the Fathers, except just this: (2) "In opposition to the civil law of the Empire, which allowed divorce on various grounds, the Fathers of the fourth and fifth centuries contended for the indissolubility of marriage save for fornication, and many condemned the re-marriage of all divorced persons, but there was also opinion in favour of the re-marriage of the innocent party to a divorce for adultery, and of an extension of 'the Pauline privilege' to cognate cases."

23,216. May we have the note now because it gives the reference to some of these?—Yes. "The indissolubility of marriage, save for the cause of adultery is taught by Chrysostom (Hom. XVII. on Matthew, Basil Epist. Canon II. Jerome Epist. ad Amand, Augustine, De Nuptiis). The re-marriage of both parties to a divorce was forbidden by a Council of Carthage (A.D. 407), and by the second Council of Milevis (416 A.D.). Re-marriage of the man was by

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"implication permitted, by the Council of Vannes (465 A.D.)." These are taken from an important article, "Marriage," in Smith's Dictionary of Antiquities. I may say the study of Augustine and his attitude is very interesting, and I have illustrated it with one or two quotations. No doubt St. Augustine strongly opposed re-marriage after divorce, and his important treatise *De Conjugiis adulterinis* deals with this question and he comes back to it on other occasions. But I would say this, that it is important that a divine equally venerated in the Anglican Church and all the branches of the Reformed Church—because St. Augustine is a man we all have some part or lot in—should say what he does. "*In ipsis divinis sententiis*"—that is the utterance of scripture—"it is so obscure whether man who without doubt is allowed to put away an adulterous wife, is to be deemed an adulterer if he marry a second time, that as far as I know if a man comes to a mistaken conclusion in these matters he may very well be pardoned." Even Augustine, strong as his opinion was, held that it was a very pardonable offence to go wrong on a question whether a man who had divorced his wife for adultery should marry a second time.

23,217. May we take it that that Latin quotation will be inserted in the print, as well as your translation?—Yes. [*The following is the Latin quotation referred to: "In ipsis divinis sententiis ita obscurum est utrum et ipse, cui quidem sine dubio adulteram licet dimittere, adulter tamen habeatur si alteram duxerit, ut, quantum existimo, venialiter ibi quisque fallatur (De Fide et Operibus)."*] (*Continuing.*) Then again he says: "I wrote two books concerning adulterous marriage in which I tried to solve a very difficult question. Whether I succeeded in solving it, and arrived at a satisfactory conclusion I really cannot tell." [*Scripsi duos libros de conjugii adulterinis cupiens solvere difficillimam quaestionem. Quod utrum enodatissem fecerim nescio, immo vero non me pervenisse ad hujus rei perfectionem sentio. (Retractationes ii. 57.)*] It is quite evident he was in doubt as to the justice of the matter. On the subject of desertion, I put in an important passage from the writer known as Ambrosiaster (*see below*). Then as to the Eastern Church I thought it useful in the supplemental print to give from Smith's Dictionary of Antiquities the statement of the rule which governs the procedure of the Eastern Church—that is on page 7—from which it appears that re-marriage after divorce is allowed; and more than that, that a clergyman is allowed to pronounce the benediction at the marriage of such divorced person.

23,218. I do not know whether the Greek Church and the Greek law are precisely the same, but we have had the Greek law put in which allows the dissolution of the marriage for a good many causes besides adultery?—Well, that is more a question for lawyers, my Lord. I did not go into that. With regard to the Roman Catholic Church I have already touched on their specific position—absolute indissolubility; but allowing divorce after re-marriage in the case where the parties were married before baptism, and if one of them afterwards is converted and the unbelieving party deserts, then a divorce can be got with a dissolution *quoad vinculum*.

23,219. You say here, (4) "But it regards an infidel marriage as dissoluble *quoad vinculum* if one of the spouses is converted and baptised and the unbeliever refuses to live peaceably with the Christian." I think we had that indicated?—Yes. [*Note.—The Council of Trent decreed that "the bond of matrimony cannot be dissolved on account of the adultery of one of the married parties; and that both, or even the innocent one, cannot contract another marriage during the life-time of the other."* Sessio xxiv. c. 6.] In the supplemental print I put a reference to the treatment of the subject by Bellamine, the great controversial Roman Catholic divine. Then that brings me down to the Reformation. (5) "The operation of the Roman Catholic marriage-law, while to some extent safeguarding the sanctity of marriage, was

"found to entail a certain amount of hardship, insecurity, and immorality; and the subject engaged the attention of the Reformers as one of great importance and urgency." (6) "The subject was handled by the Reformers in accordance with their fundamental principle that the word of God written is the supreme rule of faith and practice, and that, Scripture being its own interpreter, its interpretation is not bound by ecclesiastical traditions." In view of the bulk of the patristic evidence I thought it would be useful to put into the print on page 8 a statement of the Protestant attitude towards scripture and ecclesiastical authority. This is taken from the second Helvetic Confession, one of the confessions that was the most widely recognised throughout the Reformed Churches, and received the approbation of the Church of Scotland.

23,220. What date is that?—The second Helvetic Confession was of the year 1566. It is always to be remembered that this is our general attitude when we are pressed with the opinion of the Fathers. We believe that genuine Protestantism has a great deal of patristic support, but this is our general position:—That interpretation of scripture we recognise as orthodox and genuine which is collected from the Scriptures themselves, which accords with the rule of faith and charity, and which redounds to the glory of God and the salvation of man. Wherefore we do not suffer that in controversies of religion of causes of faith we should be pressed with the bare opinions of the Fathers, or the decrees of Councils, much less by received customs, or even by a multitude of consentient witnesses, or by long prescription." The Reformers were always very glad when they had the Fathers, especially St. Augustine, with them, but they did not feel that in the interpretation of Scripture they were bound by patristic authority.

23,221. Did they take the Scriptures as recorded in the translated version as the words which they had to construe?—The Scriptures in the translated version? Well, of course, they went back to the Greek text.

23,222. I mean whatever was recorded as an authentic translation, because Greek was only a translation from the Aramaic. They regarded that as their charter?—That is their charter, and that was decisive.

23,223. That is not quite the attitude of to-day?—They had not our knowledge in textual criticism, and they also believed in the absolute inerrancy of Scripture, which is very generally given up in the present day.

23,224. Then will you continue with the proof, No. 7?—"The leading Continental Reformers were unanimous in holding that divorce for adultery involved the dissolution of the bond of marriage, and that the innocent party should be allowed to marry another." I think one can say that that was the general—almost the unanimous—opinion of the Reformers that divorce for adultery entailed the right to re-marriage. Luther says that this was the intention of Christ, and they are very strong in repudiating the idea that there is a distinction between a divorce *quoad vinculum* and a divorce *quoad mensa et thoro*. They held very strongly—and I think this is confirmed by the great bulk of modern scholars—that there was no such distinction present to the mind of the New Testament writers. And the second thing they held was that separation from bed and board entailed very grave moral danger and disaster in many cases. That aspect of it had come home very strongly.

23,225. Might we have those references?—Yes. "Melancthon says that the relief allowed was a real divorce"; that is against the idea that it was merely a *mensa et thoro*. [*The following is the note referred to:—Luther contends that this was the intention of Christ (De Captivitate Babylonica, 1520). Melancthon says that the relief allowed was a real divorce—in quo persona vere innocens sit libera, et possit aliud conjugium contrahere (Commentary on 1 Corinthians, 1551). Calvin includes among the errors of Rome the position "that a man who has married an adulterous wife should not be allowed to re-marry her." (Institutio, IV.) Calvin has a succinct list of Roman errors, and that is put amongst them.*]

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23,226. As quoted it is a little ambiguous, but it means the man who was married who had got rid of an adulterous wife?—It is a misprint—that the man who has divorced an adulterous wife should not be allowed to re-marry her. 8. “It was generally held “ by the Continental Reformers that malicious and “ prolonged desertion is also a ground of divorce, “ which can be justified by 1 Corinthians vii. 15.” I have some references in the main print, and I should like to read two quotations from Luther which put with his usual lucidity and vigour the plea for dissolution of marriage on the ground of desertion. On page 8 of the printed memorandum, Luther says: “ I marvel that they ”—that is the Romanists—“ should “ compel a man to be celibate who has been separated “ by divorce from his spouse, and not allow him to “ take another wife. For if Christ allows divorce in “ the case of fornication, and compels no one to be “ celibate, while Paul would have a man to marry “ rather than to burn, he seems to allow the taking “ of another to wife in room of the divorced.” That is on the general question of re-marriage. He comes to desertion later: “ I would this matter were thrashed “ out and settled, so that measures might be taken “ against the infinite dangers of those who without “ fault of theirs are compelled to be celibate, that is “ whose wives or husbands desert their spouses, it “ may be for a decade or for ever. I earnestly wish “ that the passage 1 Corinthians vii., ‘if the unbeliever “ depart,’ &c., could be applied to these cases.” Then this is his argument, “ The Apostle allows an unbelieving “ spouse who deserts to be put away, and leaves the “ believer free to take another.” In that he agrees with the Roman Catholics. “ Why,” he asks, “ should not the same hold good if a believer, a “ believer in name but in fact an unbeliever, deserts “ his spouse, especially if the desertion be final” (De Captivitate Babylonica). He expressed himself more confidently still in a treatise a year or two later—his exposition of 1 Corinthians vii. where he says: “ Here “ the Apostle Paul pronounces the Christian spouse “ free, when the unchristian spouse departs, or will “ not suffer to live a Christian life, and gives power “ and right again to wed another spouse. But what “ St. Paul here says of a heathen spouse, is also “ understood of a false Christian.”

23,227. I suppose they understand by a false Christian a person who goes away though nominally a Christian because they are not performing a Christian act?—Yes, the act of desertion is proof that he or she was not a Christian.

23,228. Then you have given a note on page 10 of your proof as to Luther?—That is what I have quoted. I thought it better to state these two in full. I have quoted the first two of these.

23,229. Then there is Calvin?—Melancthon is quite as strong on it. Calvin is a little more guarded, but there is no doubt, I think, he took that view; and Bezae, in a book that was a classic in the Churches at the time—De Repudiis et Divortiiis, 1569—expresses the same view. (9) “The abolition of the jurisdiction “ of the Pope in Scotland (1560) was held to involve “ the repeal of the Roman law prohibiting the dissolution of marriage *quoad vinculum* for adultery, and it “ appears that the view was also held and to some extent “ acted on, even before the passing of the Act, 1573, “ that on Protestant principles divorce was allowable “ for malicious desertion.” As I understand we have no statute allowing re-marriage after divorce for adultery. It appears that it was never thought necessary in Scotland to pass such a statute. I take it the position of matters was that it was known throughout Christendom that the marriage law of Rome was one of the distinctive features of the Roman system, and that when a country became a Protestant country the Roman law went and whatever else it entailed; and that made lawful re-marriage after divorce for adultery. Protestantism implied the well-known views of Luther and Calvin and Melancthon, and they allowed divorce certainly for adultery, and probably for desertion.

23,230. Without any statute at all?—Yes.

23,231. And then there came the State law with regard to desertion to make it clear?—Yes. (10) “The “ Church of Scotland at first showed some hesitation “ in accepting the view that any other cause than “ adultery justified divorce, and in 1573 it still suspended its judgment, but in the light of further “ inquiry and experience, the opinion of the Continental “ Reformers prevailed, and in the following century “ the Westminster Confession, which allows wilful “ desertion as a sufficient cause for dissolving the bond “ of marriage (C. xxiv.) was approved by the Assembly” —and here I am quoting—“as in nothing contrary “ to the received doctrine and discipline of the “ Church.”

23,232. That you have set out on page 9 of the print?—Yes. Calvin held divorce for desertion, and my own opinion is that Knox differed from Calvin and only allowed divorce for adultery, and the proof is that the first book of discipline which is the work of John Knox only allows divorce for adultery; but there was also certainly a large body of opinion in the church in favour of divorce for desertion. In 1573, when the Bill was before Parliament contemplating giving divorce for desertion, the General Assembly appointed a committee, and this committee was appointed to enquire and consult with foreign doctors and report. But as far as I can find out it never reported, and the General Assembly severely censured a member for giving a vote in Parliament for the Bill before the General Assembly had made up its mind. I mention that to show that there was a difference of opinion in Scotland at that period.

23,233. Could you give me the exact date of the Westminster Confession mentioned on page 9?—It was finished in 1647. Now what I think is of importance there is that in the Westminster Confession, from which I have extracted the relevant passages, one reads, “ In the case of adultery after marriage, it is lawful for “ the innocent party to sue out a divorce, and after the “ divorce to marry another, as if the offending party “ were dead”—that is clear; then comes the next, “ Although the corruption of man be such as is apt to “ study arguments, unduly to put asunder those whom “ God hath joined together in marriage; yet nothing “ but adultery, or such wilful desertion as can no way “ be remedied by the Church or civil magistrate, is “ cause sufficient of dissolving the bond of marriage.” Here it will be noticed that wilful desertion is associated with adultery as a cause sufficient of dissolving the bond of marriage, and my point is that the General Assembly which accepted the Westminster Confession “ as in “ nothing contrary to the received doctrine and discipline of the Church” has in less than 100 years after the Reformation entirely homologated the theory that there might be divorce for desertion *quoad vinculum*. Then there is another point which I think is very important in this connection showing how Scottish opinion settled down. We have one great patristic theologian in Scotland—

23,234. I hope you had more than one?—Well, they have not been very numerous. Patristics has not been our forte. However, I refer to John Forbes, and it may be said that his *Instructiones Historico Theologicae* was one of the most valuable storehouses of Patristic lore to be found in Scotland, England or Germany down to the 19th century. It is only of recent times that works of those like Harnack may be said to have superseded him. Another point very important about Forbes is this. He belonged to our first Episcopal period; his father was Bishop of Aberdeen, and he was ordained as a priest of the Episcopal Church of Scotland. Forbes was a man of mark; he was a leader of what I call the Scoto-Catholic Party; and the Covenanters, who could be very brutal and intolerant on occasions, removed him from his Chair in Aberdeen because he absolutely refused to sign the Covenant; they drove him out of the country, and when he died they refused to allow him to be laid in the same grave with his wife—so the story runs. But the point is this, that this great Episcopalian scholar, a leader of the Scoto-Catholic Party, has written an elaborate treatise on moral theology, and has embodied in it an elaborate discussion of divorce. He deals with it on

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the view of Luther and Melancthon. He allows divorce not only for adultery but desertion; and he interprets desertion in a pretty wide sense. He holds that a man who cruelly ill-treats his wife deserts her in as real a sense as a man who goes to a foreign country. That, I think, is very striking evidence, that you should have, in the 17th century, from the mouth of the Catholic John Forbes the same view that was held by the ultra-Protestants. I consider this of so much importance that I put in a translation of the relevant passages from Forbes' "Theologia Moralis." I might read two sentences. He says: "We come, then, to the proof of our second proposition, viz., that when divorce has legally taken place on account of adultery or desertion, the marriage-bond is also loosed so that the injured and innocent party may, in the other's life-time, enter upon other nuptial vows, whether the former marriage, now dissolved by divorce, was contracted before or after baptism." There is a dissolution *quoad vinculum* both in the case of adultery and desertion. Then he says, very much in the spirit of Luther, "Who does not see that a deserting apostate is not less but rather more an insulter of God than a deserter who has never professed the faith?" It is so elaborate that I think I should like to put it in without quoting further.

23,235. (Chairman.) It looks very lengthy. Is it necessary for us to print the whole of it?—I think not, my Lord. I would be pleased to go through it and give extracts.

23,236. If you would mark it in red ink we could have it printed afterwards?—Yes. (11) "In recent times this aspect of marriage has been little discussed in Scotland; and the confessional permission of divorce for malicious desertion has been acquiesced in by the Church of Scotland and its off-shoots as a provision which can be sufficiently justified by the analogy of 1 Corinthians vii. 15, and which, while giving individuals relief from hardship and temptation, has not affected popular opinion as to the sanctity of marriage, and the normal perpetuity of the marriage tie."

23,237. That last is very important indeed?—Yes.

23,238. Because it has been suggested in the course of some of the questions put to some witnesses that if divorce for desertion alone were permitted in this country it might tend very seriously to diminish the sense of sanctity of marriage in the country. You think that is not so?—No, I do not believe it has had the slightest effect. I believe that the sanctity of marriage is a widespread, almost universal, article of popular faith in Scotland.

23,239. And the mere power to free people when the other spouse has broken away from that sanctity would not, in your view, tend to diminish the respect in which it was held?—The truth is that the cases are not very numerous, and that even in consulting with ministers of very large congregations—with some thousands of communicants—I find that if they have had half-a-dozen cases of divorce on the ground of desertion coming within their experience during a protracted ministry that is about all; so that it is not very easy to get their opinion of it.

23,240. But it is thought that it might be more extensive in this country; I do not know why?—Well, I am quite sure that while there may be some influences in the direction of lowering the ideal of marriage, nothing substantial can be attributed to the operation of this particular provision of the Scotch law.

(Adjourned for a short time.)

23,241. (Chairman.) I think, Dr. Paterson, we had proceeded as far as your heading: "Divorce in Protestant Ethics"?—Yes.

23,242. If you would take up your proof from there?—"Divorce in Protestant Ethics."—(1) The questions connected with marriage and divorce have been much discussed in modern times in the voluminous literature of Christian ethics, which ranks as a separate division of Systematic Theology. (2) While Christian ethics has been cultivated from every ecclesiastical standpoint, it is generally distinctive of

"the discipline that it does not regard its task as identical with Biblical exegesis, but conceives Christianity as being on its practical side essentially a religion of principles, which throws upon the Church the responsibility of thinking out for itself many important ethical problems."

23,243. I think you elaborated that in your earlier evidence?—Yes.

23,244. Putting the duty on the Church to think out the application of the principle?—Its application and its limitations. (3) "It is unanimously held by writers on Christian ethics that the Christian ideal involves the permanence of marriage, and that the maintenance of its character as a life-long union is necessary to secure the end sought in marriage, viz., the well-being of the spouses, and the interests of their offspring." Then I note: "The general principle of the permanence of marriage must be affirmed by every Christian thinker, because (1) it was taught by Christ, (2) it naturally follows from other Christian principles, viz., the law of love, and especially the equal dignity of the sexes in the spiritual sphere, (3) it is demanded by the higher interests of the parties concerned, and of the society to which they belong. 'I detest divorce,' said Luther, in his first approach to the subject (*De Captivitate Babylonica*), and it is to be borne in mind that a similar preamble occurs in all weighty discussions that treat the subject from a Christian standpoint." (4) "On the other hand it is recognised to be an unfortunate necessity that there should be facilities for terminating the marriage-union in certain cases which entail grave injury to individuals or to society." Then I note: "It is easy to misrepresent the position of those who advocate extended facilities in divorce. It is as unjust to charge them with favouring divorce as to charge surgeons with a desire to mutilate the human body." That was suggested to me by a phrase of Calvin, which speaks of an adulterous wife as a rotten member who had to be removed from the body. (5) "It is generally held by Protestant writers that divorce is to be allowed for adultery—with the possibility of re-marriage at least for the innocent party, and that on these grounds (a) that the exception was probably mentioned by Christ, (b) that if not, it was probably taken for granted, and (c) that it involves a *de facto* dissolution of marriage which truth requires to be recognised." I touched upon this in the earlier part, too. "Note.—If it be supposed that in the authentic teaching of Jesus the prohibition of divorce was stated without qualification, we have simply an additional example of the difficulty that arises in connection with the teaching of Jesus about oaths and litigation." What I mean is that He also condemned oaths and litigation—there is a difficulty there—nevertheless, we do have oaths and we have courts of law. "It is not argued, on the ground of Matthew v. 39–40, that it is the duty of a Christian state to withhold from the wronged the opportunity of seeking redress in a court of law." (6) "On the assumption that Christ, whether explicitly or implicitly, allowed divorce for adultery, the question arises whether the words 'save for the cause of fornication' are consistent with the admission by civil and ecclesiastical authorities of other grounds of divorce." (7) "It has been held by some writers that, as Jesus frequently stated a principle in the form of a particular instance, the mention of adultery is to be understood as an illustration of the principle that marriage is to be legally dissolved when it has already been dissolved in fact, and that other exceptions should be allowed which also involve a radical subversion of the union." I quote from Bishop Martensen, the author of an elaborate work on Christian Ethics in three volumes, which, while not the most important contribution, is the most interesting, and one which enjoys a pretty high reputation; and he says: "Are the sayings of our Lord to be regarded literally as laws, or are we to find in them a principle to be applied by the Church in such cases as should occur? The latter view is, according to our conviction, the only evangelical one. The principle is,

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"that where the essential bond of marriage is broken, where matrimonial fidelity is destroyed in its roots, but also there only, divorce is lawful." [Martensen, "Christian Ethics," III. p. 42.] Newman Smyth, the author of a volume on "Christian Ethics in the International Theological Library, writes to the same effect, mentioning particularly the case of habitual drunkenness which had not been developed in our Lord's day as it has amongst ourselves, and which he thinks may entail such complete dissolution of the marriage as to justify divorce *quoad vinculum*. [Newman Smyth, "Christian Ethics," p. 415.] I may say that the greatest book on the subject is the *Theologische Ethik* of Richard Rothe, a Germany authority of the first half of the 19th century, and he states the principle on which divorce finds justification. "A justification for divorce exists when a real marriage no longer exists." [Rothe, "Theologische Ethik," par. 1081.] (8) "In somewhat similar fashion it has been argued that fornication or adultery may be understood in a wide and spiritual sense, and that offences of various kinds may be brought under this category as grounds of divorce." St. Augustine held that a man could put away his wife from bed and board for spiritual fornication, though he afterwards rejected the utterances as rash. [Retractationes.] "It is argued by Rothe, Dorner, and others that the cohabitation of married persons who have lost all affection and trust towards one another is an example of the *πορνεία*"—the fornication that justifies divorce. I was struck with that opinion of Dorner, that where two parties had lost all affection and continue in cohabitation, they are involved in fornication.

23,245. That is Dorner's system of Christian ethics?—Yes. "The essential thing in marriage is the union of souls, and the subversions of this union is a ground of divorce." [De Wette, quoted by Rothe.] Then comes the ground I take up and hold to decisively. (9) "The extension of the scope of divorce beyond the specific case of adultery is justified on the ground that, while the ideal which Christ set up is binding upon members of His Kingdom, it ought not to be imposed by force upon a mixed society including many who are non-Christian or only nominally Christian." That is my point, that the indissolubility of marriage is an element of the ideal which I think is binding on Christ's followers. It is a totally different consideration whether it is the duty or even the right of the State to enforce this ideal on the nation which is a mixed society containing many who in no proper sense of the word are Christian.

Note.—"It is no Christian duty to seek divorce—even from an adulterous spouse. At the most this is a right to be exercised with responsibility from individual judgment. And in forming a judgment it is to be remembered that the Christian ideal includes constancy of affection, and forgiveness unto seventy times seven." If people were all genuine Christians there would be no divorce and no ground for divorce. "But it is another question whether it is the duty of the State to enforce conformity to this ideal. Christ himself recognises the difference between the office of the legislator and of the moral teacher." [Mark, 10, 5.]

He excused Moses; he had allowed divorce because of the hardness of their hearts and that is a principle which still has validity. The hardness of hearts still exists, and if one is no longer speaking of Christian ideal, but what is competent for a legislature, one has to take account of that still as well as Moses. Then I quote Calvin in support of that. Calvin says: "National laws are sometimes accommodated to the manners of men. Political and outward order be widely different from spiritual government." [On Matthew, 5, 31.] (10) "The duty of the State"—this is my view—"in relation to the dissolution of marriage, is not to make the Christian ideal compulsory, but to make provision for the relief of those who suffer injustice in marriage in so far as this shall be compatible with the general interests of society." Then I deal with the particular cases to which I apply that. (11) "Grave injustice is caused, and the ends of marriage are frustrated by prolonged and

"malicious desertion." I mention, as the main ends the well being of the character of the spouses and the propagation and training of children, and I say that these ends are obviously frustrated by permanent and malicious desertion; "and those who desire redress by divorce and re-marriage ought to be able to procure it (though this may be disallowed by the ideal) in accordance with the cognate exception mentioned by St. Paul." [1 Corinthians, 7, 15.] One cannot deny that there are a multitude of people who are really heathen in our land, and I think what he conceded in the case of an actual heathen in his day he would quite intend to apply to a virtual heathen to-day. Note.—Malicious desertion is closely akin to adultery, and is often associated with it. It involves the frustration of the two principal ends of marriage—the comfort and well-being of the spouses, and the proper rearing and training of children." Then I have already said this: "The difference between the case mentioned by St. Paul, and the desertion of a spouse by a bad Christian, does not enter into the substance of the matter; and the Reformers were justified in the use they made of the precedent." (12) "Gross injustice is also suffered by the spouse of a habitual drunkard, or of a hardened criminal; and in view of the danger to life and character, and the degradation of the home-life, it seems right that the injured party, if desiring it, should be able to get protection and even to found a new home." I quote here from Rothe who says: "In some cases the home becomes, not a school of character, but a den of corruption. When the thorough demoralisation of one of the parties has become notorious and threatens to involve both, along with their family, in ever deeper degradation, there exists a perfect justification for divorce." (13) "In view of the importance to the State of maintaining the principle that marriage is normally indissoluble, it is inexpedient that divorce should be allowed save for a cause which involves guilt in one or other of the parties, and which is condemned as disgraceful by the public conscience." I have Rothe with me in this opinion. "Divorce," he says, "ought to be for reasons which have the quality of wrongdoing, and the offender should be punished by some form of public censure." [Rothe, 1081.] Personally I attach a good deal of importance to that. I am alive to the strength of the argument in the case of insanity, but I do feel it to be extremely important to ensure that those who have passed through the Divorce Court—the guilty party at least—shall emerge, to put it otherwise, with disgrace. (14) "For the reason indicated the State ought not to allow divorce and re-marriage on grounds which are of the nature of calamity, such as enforced absence, sickness, lunacy (when not due to misconduct)"—I think if it were clearly due to drunkenness it would come under it,

23,246. Or to another class of misconduct?—Yes. To the list of calamities not justifying divorce I add childlessness and incompatibility of temperament. My Lord, the above is an expression of opinion which goes to some extent beyond the Westminster Confession, and beyond the state of opinion in the Church of Scotland, so perhaps I might be allowed to read a short paragraph on page 10 of the supplementary print as to the present state of opinion in the Church of Scotland, so as to make it clear that I am expressing an individual opinion, and that the Church is not responsible for what I have said with regard to other causes than adultery and desertion being allowed. "There are a few ministers of the Church of Scotland who disapprove of the re-marriage even of an innocent person who has been divorced, and as matter of conscience they would decline to perform the ceremony. But the overwhelming majority"—I think I am entitled to use the adjective—"do not feel any scruple in the case of an innocent party. Kirk sessions are in the habit of certifying poor persons so as to enable them to procure public assistance in suing for divorce. On the other hand, there is no evidence that the Church of Scotland is in favour of allowing any grounds of divorce other than adultery and wilful desertion. The General Assembly would

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"almost certainly oppose the recognition by the civil law of additional grounds. It is, indeed, possible to argue that in allowing divorce for desertion, the Westminster Confession is not in spirit inconsistent with the view that divorce might be allowed for aggravated cases of drunkenness, criminality, and cruelty, since those may constitute desertion of the worst kind [*cf.* Forbes, 'Theologia Moralis']. But in expressing some sympathy with this view, the witness expresses an individual opinion, which (it is right to say) is not sanctioned by, and is doubtless repugnant to, the general mind of the Church of Scotland."

23,247. Just one question to make your point plain. I should like just to ask you about the case of lunacy which you referred to, even when it was not occasioned by the misconduct of the person pursued. Would not still the separation of the two parties be likely to involve injury to the person left behind—the words you use are, "grave injury to individuals or to society"—by leaving them, as has been suggested to us, to form another union?—Yes, I am aware of that. The case is one of great difficulty, but my own feeling is that it is very important to uphold this distinction. Then, further, what I can see is that in this particular case the patient and brave endurance of the trial may have an effect upon character. The character of the unfortunate spouse, I think, may be actually beautified and improved by a patient endurance of the trial. Of course, I see the moral dangers which you have suggested.

23,248. The moral danger in the case of insanity supervening shortly after marriage in the case of young people is extremely serious?—Yes.

23,249. One has been met with the suggestion about it for ages past?—I feel it might be held that insanity placed the sane spouse in virtually the position of the widow or the widower. That is arguable.

23,250. I think it was suggested by one of the Commissioners to one of the witnesses the other day that there must be cases where the spouse who is confined is really in the position of a dead person?—Yes.

23,251. No mind so as to make them any longer a person possible to communicate with, and that therefore they might possibly—I do not say it is right—be regarded as really and civilly dead?—Yes, of course. But there is the possibility of recovering.

23,252. Would there be in your view any real harm to society or to any principle in saying that in such a case as that the spouse left behind might contract a fresh alliance in order to avoid the danger of sin; and also to get assistance in looking after children already existing?—Well, as I have said, I am very loath to abandon the idea that when divorce is obtained it carries with it a great stigma; and I feel if you admit insanity you give up that principle.

23,253. Might I venture to suggest that the stigma is utterly unimportant in the case of the person who is civilly dead?—Oh, yes; I see that.

23,254. However, we quite understand your view. I daresay you will agree that it is a very difficult point?—Yes, I agree it is a difficult point, and, of course, what creates the difficulty is this, that the Christian thinker on the one hand feels the paramount importance of maintaining what I have called the normal indissolubility of marriage. It is vitally important to society that that should be maintained as a general principle, and therefore I feel we must guard very jealously any exception that is proposed.

23,255. But supposing the general exception is based on a principle that the supervening cause has made any further tie of marriage absolutely impossible or practically so?—I will admit, to borrow a phrase of St. Augustine, that it is *quaestio latebrosissima*.

23,256. (*Mr. Brierley*.) Just one question as to your last paragraph that you read from the print. You say the General Assembly would almost certainly oppose the recognition by the civil law of additional grounds, and that there is no evidence that the Church of Scotland is in favour of other grounds. Has the matter ever been discussed at all by them during the last generation?—No, it has not, I think. I am talking from private discussions with people.

23,257. And the opinion you have formed generally?—Yes.

23,258. There has not been any discussion about it?—No, this is a general impression formed from discussion, and also based upon my knowledge of two things; first the great importance attached by the Church of Scotland to maintaining the sanctity of marriage, and the fear that if you begin to change you are opening the flood gates; and then, of course, there is the general conservatism of view which prevails on such matters.

23,259. (*Sir Lewis Dibdin*.) I have been away so much I hardly like to presume to ask you a question, professor. There are one or two things I want assistance about myself. You have given us an account of the views of different reformers, Luther on the one hand and the Scotch Reformers on the other. Have you made any study of the views of the English Reformers on this question?—Well, I may say I very naturally left it to Anglican theologians and historians to inform the Commission on this point. At the same time I have read a large part of the "*Reformatio Legum Ecclesiasticarum*," which is generally attributed to Cranmer. I have not gone into the question of its genesis, but I suppose one may assume it had the imprimatur of Cranmer, and I think that it reproduces the opinions of Luther and Melancthon. I should call it the Lutheran view of divorce.

23,260. It looks as though it had a continental origin, does it not?—It represents what I may call the consensus of reformed opinion at the time; and the Reformation began on the Continent.

23,261. I do not want to trouble you with the *Reformatio legum*, but I wondered if you were familiar with the English Reformers who wrote on this subject?—No, I have not gone into that, but I should have thought Cranmer's treatment of it was very important.

23,262. Oh, very important, but it is a large question on which I do not trouble you; not because it is not important, but because it has been a good deal dealt with?—Yes.

23,263. You have given us your view of the Pauline exception. I suppose that is not the common view—at any rate of the Church of Rome. The common view, I suppose, is that the Pauline exception applied to marriages of non-Christians who were not within our Lord's direction as to the indissolubility of marriage. That is the common view, is it not, or the common Latin view?—Yes, I agree with Rome in respect that this passage justifies a dissolution of marriage *quoad vinculum*, though those that hold the view I express differ from Rome with regard to the extension of the practice.

23,264. We are all at one that it admits a divorce *quoad vinculum*, but we are not at all at one as to the range of it?—That is so.

23,265. As I understand the view of a good many members of my own communion and of the Latin Church is that it does not refer to Christian marriage at all, but only to what St. Paul calls the unbelieving spouse?—That is so.

23,266. You have taken that into consideration?—Yes.

23,267. You have made it quite clear that your view is quite different?—My view is that which is set forth in the extract from Luther, and which is repeated by Forbes, to the effect that there is no substantial difference between the heathen and the false Christian.

23,268. I rather wanted to get that clearly on the notes; that you recognise no distinction between a Christian marriage and a non-Christian marriage in its nature and possible dissolubility?—Not with regard to the dissolubility; I hold that both are dissoluble.

23,269. I was very interested in what you said about St. Augustine, and you quoted his words of doubt as to how far a man who had married after having an unfaithful wife could be blamed; but I am right in supposing that that is not the universal view, am I not? Is not a largely held view that St. Augustine was not talking of Christian marriage at all, but of marriages of catechumens, or persons outside the Christian laws of marriage—of course on the view which St. Augustine undoubtedly held I think that there was a difference

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between Christian marriage and marriage of non-Christians. St. Augustine undoubtedly held that, did he not, that the Christian marriage and the marriage of non-Christians were quite different?—Yes, I think that can be said. There are a good many treatises in which he discusses the subject. I think you are referring to the —

23,270. I am referring to the extract you read from the “De Fide et Operibus.” I can make my point clear if I read an extract from Mr. Watkins’ book, which I daresay you are familiar with, on page 325. He says, about half-way down, “We come now to the greatest doctor of the west, St. Augustine.” Then I will leave out a sentence. Then he says: “Much has been said in ‘this great controversy of a single passage in the tract “De Fide et Operibus” in which St. Augustine says, “‘whosoever hath put away a wife taken in adultery “and married another does not seem as if he ought “to be on the same footing with those who divorce “and re-marry for some other cause than adultery. “And in the dictates of God himself it is so obscure “whether he who unquestionably may dismiss an “adulteress is yet to be judged an adulterer if he “marry another that, as far as I can judge, one may “pardonably err on that point.”’ So far, Augustine. Then Mr. Watkins goes on: “Will it be credited that “this well-worn quotation has no reference to Christian “matrimony at all. The whole passage refers to “catechumens who are candidates for baptism, and “who are not yet members of the body of Christ. “The subject of the re-marriage of converts and of “the relation of Christian marriage to non-Christian “will be treated at length elsewhere: and it is sufficient “here to notice that what is remarkable about St. “Augustine’s attitude in the passage now under notice “is not that he admits to baptism those who prior to “baptism have put away their wives on the ground of “adultery and married again, but that he should “consider that their case has in it any great element “of difficulty”—then he goes on. You do not agree with that, I suppose?—Well, of course, I should need to verify that. On the face of it the quotation seems to refer to a case which must have been very much commoner and very much more canvassed; but of course I cannot answer this question off-hand. All I do know is that there was a very large body of opinion in the time of St. Augustine in favour of allowing the innocent party in a divorce for adultery to marry again. It is discussed at great length in the treatise addressed to Pollentius, and we know there were canons at the time that at least implicitly allowed it. The question of the inequality of the sexes emerges there. The Catholic Church at the time denounced a woman who married again after divorcing a husband, and said “you will be debarred from communion for life if you do”; but it had not the courage to say that to the man; it only counselled him after divorcing an adulterous wife not to marry again. So there must have been a large body of Christian opinion in that direction, and there are a number of the Fathers contemporaneous with St. Augustine.

23,271. Well, I only refer to that passage?—I think your quotation is correct. It certainly does seem to bear on that point, but I shall certainly verify this.

23,272. You will further consider that?—Yes.

23,273. (Chairman.) Perhaps, Dr. Paterson, if you would verify it and append a note to your proof when it is sent to you it would be convenient?—If I may do so. Of course if I have made a mistake I have erred in very good company, because Dean Alford, and almost everybody else who refers to the subject, quotes this in the sense I did. I will verify the reference at the earliest opportunity. *Note subsequently appended by request*:—It is true that St. Augustine (*Liber de Fide et Operibus*, par. 35) is discussing the case of a catechumen who had divorced his wife for adultery and married another, and is considering whether he can be admitted to baptism. But he does not say that the verse in Matthew is obscure only in its bearing on this particular case. His words are a general statement as to the obscurity of a text which can be brought into relation to the case of a baptized person who has

procured divorce for adultery as legitimately as to the case of a catechumen.

23,274. (Sir Lewis Dibdin.) Then to go to the end of your proof, to the principles you lay down. Am I stating your view accurately like this: that in your view the Christian ideal is against divorce altogether, but that the State must legislate according to practical circumstances and cannot be bound by the Christian ideal?—That is so. In preaching to a congregation if I touched on the subject at all I should tell them that I think if any of them had been divorced they should not marry again. I should consider that the Christian ideal to be preached, or, rather, to be impressed upon them in private. But if I was called on to advise the legislature with regard to the matter I would say: you cannot make the elements of the Christian ideal compulsory; these must depend on moral suasion; and in legislating you must have regard to the hardness of heart of a mixed nation.

23,275. You have made it perfectly clear, professor, but I wanted to ask whether the State you are desirating is a Christian State?—Well, St. Augustine said that the Holy Moses acting under Divine inspiration made these concessions to the theocracy of the Old Testament—“because of the hardness of your heart”—and I think it is arguable that the State may still make similar concessions.

23,276. That is the point of view that makes a difficulty in my mind, because our Lord contrasted the hardness of heart which had allowed the system under Moses with the new rule that he was laying down; and therefore it rather surprises me to hear that on account of the hardness of the hearts that exist now the same license must be allowed which our Lord appeared to think was part of his mission to remove?—To use theological language, I should say it holds within the Kingdom. It is a law for the members of the Kingdom, but cannot be made a law for something quite different from the Kingdom, namely, the population of England and Scotland.

23,277. Does that mean that the State, though we talk about a Christian State, should not really legislate according to the law of Christ, but should look at existing circumstances?—It cannot legislate up to the level of the Christian ideal. It may reach it in course of centuries, but it cannot legislate up to that ideal for many different classes of people. For instance, truthfulness and brotherly love are elementary ideals of the Christian law; but you cannot pass laws to force people to act on the principle of brotherly love.

23,278. But the question of divorce legislation is conceivable either way, and I suggest your position is that the State cannot really legislate according to the teaching of Christ. A Christian ideal, in fact, in that sense is unobtainable?—No, it cannot embody the whole of it in a legislative code, though I should hope it would progressively be able to do so. But in the long run even I should doubt if a State could ever take all responsibility from the individual conscience. The question whether a man is to divorce an adulterous wife and marry again is one he must decide in the forum of his own conscience and is not to be decided for him by the State.

23,279. Now I want to ask you about the action of the Church, leaving the State on one side altogether. How does the Church treat a man who has violated the Christian ideal—in obedience to the law of the State it may be, but that is not material—and has re-married. Is he to be under any discipline or to be received into Church privileges, or how is he to be treated?—Well, let me take the practice of the Church of which I am a minister as a starting point. We re-marry the innocent party; the innocent party is admitted to communion. It is against the law of the Church of Scotland for a minister—I think I am right in saying this—to marry the guilty party; and it is contrary to the discipline of that Church consequently to admit such persons to communion. Of course discipline is not enforced so strictly as it was in former times—

23,280. May I interrupt? The marriage of the innocent party by the Church is a breach of the Christian ideal, I gather, according to your view?—Yes, I

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think that the divorced party should remain unmarried, if he asked my advice.

23,281. And yet the Church notwithstanding does re-marry them?—Yes.

23,282. And of course admits them to full privileges?—Yes.

23,283. Now the guilty party. You were just going to tell the Commission how the Church treated the guilty party. They refuse to marry him?—Yes.

23,284. Supposing he marries under the sanction of the State, what do they do? Do they excommunicate him?—Well, discipline is administered in a more lax way now than formerly, and I think it very possible that he would find it possible to be admitted to communion. However, it is against the law of the Church, and he ought to be dealt with.

23,285. Let us get away from what is actually done to what, in your view, ought to be done. First of all the innocent party who breaks the Christian ideal by re-marriage; do you think that party ought to be married by the Church and admitted to Church privileges?—Well, I can only fall back again upon this parallel, which I think is a very good one. I hold it to be the Christian ideal that if a man is slandered, or deprived of property, he ought not to seek redress. But if a man who has been slandered, or who has suffered in his interests, raises an action for damages in a court of law, I think he is within his rights, though it is not the Christian ideal; and though he is acting on a lower level than the Christian ideal I should not debar him, as an evil liver, from the communion. It seems to me that the innocent party seeking divorce is on the same footing.

23,286. Now as to the guilty party; how ought the Church to treat the guilty party?—John Knox held that he ought to be put to death in accordance with the law of the Old Testament.

23,287. I am much more interested in what you think than what John Knox thought?—That, of course, could not be carried out, and it would appear as if the matter were compromised in Scotland and compromised in a very sensible way, in the sense that the guilty party can be mulcted in damages.

23,288. I am not asking what is the actual state of things?—I was going to say that I approve of the guilty party being mulcted in some way—possibly by the loss of property as well as loss of reputation. Then with regard to the marrying again, my own view would be this, that a minister of the Church should not perform that marriage. I would have a civil marriage and I would put him upon probation if I were a minister; and if after a year or two he and his new wife had showed signs of repentance, and if they were respectable and were living as Christian people, I should re-admit them to communion. That would be my own view—that the Church should not perform the ceremony, but after probation re-admit them to communion.

23,289. What was Rothe's position?—He was Professor of Divinity: he was a theological professor. I cannot remember the university at this moment.

23,290. One of the German universities?—Yes, but he saw something of the world, because he had been a chaplain at Rome for some years; and then he devoted himself to theology and rose to very great eminence. He was one amongst the genuine thinkers in Germany during the first half of the 19th century.

23,291. There is no translation of his book?—No.

23,292. You quote Dorner. "When both parties are Christians, no such thing as divorce can take place. But when this is not the case marriage may be destroyed by sin, and it may be necessary (as with the Jews under Old Testament dispensation) to make allowance for hardness of heart in order that the evil may not be made worse." (Dorner, page 544.) I suppose it means when it says both parties are Christians, if they act as Christians?—Yes, that is the thing, if they act as Christians.

23,293. (Chairman.) Might I ask this just to get it clear: What the signs of repentance, if they had re-married, would be?—Well, you cannot ask them to repent if, having performed this second marriage—

23,294. (Sir Lewis Diddin.) Or you would not ask them to separate?—No. I think if I had found they had lived a respectable life for a number of years, and had given credible signs of piety and virtue, that I should re-admit them.

23,295. You would re-admit them as married people?—Oh, yes, as married people.

23,296. Can you tell me what, in your view, is the principle that ought to govern divorce altogether. I am not now on the principle as between Church and State, and that kind of thing, but what is the principle that ought to govern divorce altogether. Is it something which breaks the marriage bond, that goes down to the basis of it, or what? There must be a principle?—I think the principle is that which has been stated in one or two of the extracts with some variety of expression, namely, that where a marriage no longer exists *de facto*—otherwise, where the main ends of marriage have been frustrated—that that marriage may properly be dissolved *de jure*.

23,297. Would you agree with some of the writers you have cited on page 13, where you say, "It is argued by Rothe, Dorner, and others, that the co-habitation of married persons who have lost all affection and trust towards one another, is an example of the *πορνεία* which justifies divorce"?—No, I quote that. I do not agree with that. That is going too far.

23,298. But is not that quite logical? Has not the bottom of the contract been knocked out there if the parties have ceased to love one another?—Well, I think that this case differs from others because the ends of marriage are not wholly subverted in this case. In this case marriage is still a school of character in which it is possible to learn lessons. Then in the second place the maintenance of such a union may not be inconsistent with the well-being of the children. The cases where I would allow it would be those where the causes are such as to demoralise the other spouse, and, perhaps, also, to demoralise the children—to bring them up to a life of crime or evil.

23,299. I quite see that those are worse cases: but I cannot see that you have not come within your definition of an utter subversion of the marriage contract, when the fundamental condition of loving one another has gone; which these writers very logically seem to have held?—Well, I am influenced by two considerations, one to give redress when the situation is intolerable, and the other to maintain, as far as possible, the normal indissolubility of marriage, its character as a union *ad vitam aut culpam*.

23,300. I see you are willing to admit cases of divorce, but I want to know whether, if you admit the principle, you are not bound to go wherever the principle leads?—But is not there something in my contention that a loveless marriage may fulfil a main end of marriage as a school of discipline, and training ground for the children? I am certain there are cases where a marriage is a loveless marriage, but, nevertheless the children are well brought up.

23,301. But one of the principal terms of the vow is that they should love one another?—Yes.

23,302. Is not it broken then?—Yes, in one particular; but I require a combination of graver particulars to admit of a dissolution.

23,303. (Lord Guthrie.) Professor, you said you would justify divorce when the situation was intolerable?—Yes.

23,304. Do you think the situation is intolerable even if people have ceased to love one another?—No, I think not. My own impression—speaking from observation—is this, that there are many marriages that might have been intolerable owing to the decay of affection had it not been that the husband and wife found a new bond of union in their affection for their children, and because of their responsibilities towards their children.

23,305. And in that way the union may be thoroughly tolerable although they have no personal affection for one another?—That is what I feel.

23,306. You refer to the conditions of the contract. I suppose you distinguish between those which are absolutely essential for its reasonable continuance, and

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those which, although most desirable, are not in that position?—Yes, I should draw that distinction.

23,307. The word "love" has been used. Take the case a little differently. Suppose, instead of ceasing to love one another they have come to hate and detest one another, and show that to such an extent that one who is hated really finds it impossible to continue the existence of the marriage tie. You might then have, I suppose, a case which you would place under cruelty?—That would be a case that would come under cruelty, and if it were very aggravated in form would meet the two tests; first, the helping to destroy the character of the parents—demoralising the parents—and perhaps also the children.

23,308. And I notice, Professor, in your evidence you have very conspicuously in view the interests of the children?—Yes.

23,309. If in a reasonable sense a home can be still maintained you do not think that is a case for divorce?—I think not.

23,310. But if it is reasonably impossible to expect the people to adhere together, whatever the cause may be, so long as it involves moral fault, you think there is room for the remedy of divorce?—Yes, that is my view.

23,311. But on the question of moral fault I think you indicated that your idea of the school of Shammai was that the moral fault contemplated by him must be in the direction of lewdness or indecency?—Yes, something disgraceful.

23,312. Well, that is a different thing. You might have moral fault where there is no sexual element at all?—That is so.

23,313. When you said the school of Shammai had limited the right of divorce to moral fault, did you mean that they were all cases where the sexual element came in?—No, I think the parallel passage in Deuteronomy indicates that indecent conduct as well as unchaste or lewd conduct would come into play.

23,314. Apart from sexual matters altogether?—Apart from sexual matters.

23,315. Do you, considering the whole matter, see any difficulty in limiting the grounds of divorce so as to come within that principle of a situation which must be intolerable?—I think I have specified the cases. I am quite clear about adultery and wilful desertion; and using some licence, I admit, as a minister of the Church of Scotland, I have expressed the opinion that the idea of desertion may be extended to include habitual drunkenness, habitual cruelty, and crime.

23,316. Is it quite clear in your view that any proposal like divorce by mutual consent, or, still more, divorce at will, would be entirely excluded by the principle you have laid down?—Yes, I am of opinion, and I am strongly of opinion also, that it goes contrary to fundamental Christian principles, and would be disastrous to the interests of society.

23,317. You referred to the question of Christian ideal. How far do you go, Professor. Would you think it would be a duty in order to save a life to tell a lie to a would-be murderer?—St. Augustine is a great authority on that vexed question of casuistry.

23,318. Would it be a duty—not merely a right?—Well, it is such a large question; I feel it cannot be discussed off-hand.

23,319. I put it to you, because the Bishop of Birmingham says this in his book, "The Sermon on the Mount":—"It can hardly, however, be denied that there are rare cases where untruthfulness in word becomes a duty, owing to the social evil which verbal truthfulness would involve. Thus almost all men would think it right to tell a lie to a would-be murderer in order to save life." Do you assent to that?—I think so.

23,320. Do you? I do not?—I think there are three things needed for a lie. First you say a thing that is not; secondly you know you say a thing that is not with intent to deceive; and thirdly you are addressing your words to a being who is regarded as a normal human being. If a person is an intending murderer, or insane, the third condition is not fulfilled.

23,321. Do you think you would be acting up to the Christian ideal in telling a lie in any circumstances

whatever?—Well, my own idea is you could if a person is insane or temporarily insane.

23,322. I am going to try a man in a few days in Inverness who is not in the least insane?—The view held by St. Augustine is the rigorist view, that you should not tell a lie under any circumstances. I think that is the Christian view, though I should not act on it in the case mentioned.

23,323. In Scotland, before the Reformation, we had no divorce *a vinculo*?—So I understand.

23,324. Had we anything that acted really as a substitute for it?—I understand that there were declarations of nullity based upon degrees of consanguinity by which divorce was practically secured; proving that it is a necessity in some form or another, and if it cannot be got directly it must be got indirectly; and all my information goes to show that owing to these declarations of nullity and the like, the marriage tie had been rendered so insecure in the Roman Catholic Church, which is supposed to safeguard the sanctity of marriage, that the Protestant law was looked upon as a benefit to the nation of the first magnitude. I believe what is true historically is that the Protestant relaxation actually strengthened the position of marriage.

23,325. Now it is said that in England before 1857 the laws of England must have been in favour of indissolubility of marriage because there was no statute authorising dissolution. That does not seem to tally with the example of Scotland where we had no statute either, but we had a machinery for carrying out what was the law. Do you see why, in England, it should be held that they had indissolubility because they had no statute, when we certainly had no statute and had dissolubility?—I fancy the reason must have been that we had in Scotland a machinery for acting on what we recognised as Protestant principles. The Supreme Court gave divorce and there was a division of opinion at the time as to whether it really appertained to the Ecclesiastical Court or the Civil Court; and the General Assembly asked at one time that it should be allowed to act as a court for divorce, or failing that that there should be a specially appointed Board of Commissioners for the purpose. I think some ministers were called to account for doing it, but the existing machinery was exercised and as the country had become Protestant and the marriage laws were an important part of Protestantism, they thought they had better set about dissolving those impossible marriages.

23,326. It has been suggested that in Scotland we proceed rather on grounds of public policy and do not derive our sanction from Scripture with regard to this matter. Is that so?—Nothing was ever done in Scotland down to the 18th century that had any religious or ethical bearing without justification for it being sought in Scripture.

23,327. And in the Westminster Confession of Faith I notice in an edition I have that there are proof texts appended to the fifth and sixth sections of chapter 4 dealing with marriage and divorce. Do you know what is the history of these proof texts?—My recollection of it is that the Westminster Assembly of Divines after drawing up the famous Confession of Faith laid it on the table of Parliament, or were about to do so, when they got instructions to supply proof texts in justification of all the positions they had taken up. That was not difficult to do because when the Westminster Confession began its work it was on the footing that nothing was to be included in it which could not be justified by Scripture, and the sole appeal in all debates was to be to Scripture. And they complied with the request of Parliament and tabled the proof texts, and that adduced, I think, does justify divorce for desertion. They put in 1 Corinthians, 7, 15, in reference to that.

23,328. Now you refer to the weight given in Scotland to the opinions on this and other matters of Continental Reformers. You will have noticed that in Mr. Watkins' book "Holy Matrimony" he absolutely denies the influence of Continental Reformers and indicates that in looking at the question you must stop in the year 1120. Do you think the Scotch were right or that that view I have indicated to you is a more reasonable one?—I hold that we were right for two

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main reasons: the first is that we went back to Scripture and, though we may hold somewhat modern views as to certain aspects of Scripture, the fact remains that Scripture is our best authority for original Christianity; and in going back from the mediæval period—from the patristic period to Scripture—the Reformers were perfectly right. With regard to the other point I feel that it is an extremely narrow hearted as well as unintelligent view of Church history to take, to say that the Church when it was under the influence of the Greek mind and the Latin mind is the authoritative Church, and to rule out the period in which the Church gathered up into itself the wealth of Teutonic mind and Teutonic character of a race which combines the speculative genius of the Greeks with the practical capacity of the Romans.

23,329. Although the Scotch Reformers gave great heed to what the Continental Reformers thought it appears they took their own way because they did not adopt it and limited the causes for divorce to adultery and desertion; whereas many of the Continental Reformers had included many others?—It is true, and it is interesting. The explanation is this: Protestantism fell into two divisions, Lutheran and Reform. The Reform branch of the Church popularly known as Calvinism, including the Church of Scotland and many Continental churches, took the narrower view of Scripture. Their maxim was practically that nothing was to be accepted which could not be proved from Scripture. The Lutherans were more liberal; they were more like the Church of England in this regard; and their position was somewhat freer as over against Scripture; they were willing to accept anything that was good provided it was not contrary to Scripture; and in dealing with divorce they did not find themselves so fettered by the letter; Calvin and John Knox only found adultery and desertion mentioned as grounds, while the Lutheran Church felt itself free to allow other causes. Another witness from Scotland who has made a special study of the books of common order of the Lutheran Church in the 16th and 17th centuries will be prepared to speak of these on the general point, we were given to holding more stiffly to the letter of Scripture.

23,330. Mr. Watkins in his book says all the historic churches in Western Christendom have limited the right of divorce to adultery. Is the Church of Scotland prehistoric or non-historic, or do you consider it also a historic church?—It all depends on the meaning of historical. There is a point of view according to which there are only the three sections—the Eastern Church, the Western Church, and the Church of England. But, of course, we operate with a totally different conception of the Church. The Protestant conception is—well, it is too large a question to go into just now, but we entirely repudiate the idea that we are not a true branch of the Christian Church; and we hold that we are indeed a branch of the Catholic Church.

23,331. Is there any church except a section of the Church of England—any Protestant Church, that denies to the Church of Scotland the right of being a historic church?—I do not know what a historic church means. We are a church which has a history.

23,332. Do you know any sense in which you are not a historic church?—It may be said that we are not, in the sense that we have not had Bishops since 1689—since the Revolution settlement; and when it is denied we are a church what is meant is that we have not the apostolic succession inasmuch as it does not come through the proper channel, because since 1689 we have not had bishops. It is all a question of the validity of our orders, with regard to which I have to say that though some of us attach little importance to it, we hold that our ministers are in tactual connection with the Apostles as much as the clergy of the Church of England. We cannot deny that since 1689 they have been ordained by Presbyters.

23,333. Do you know, as a minister, in the practical working of marriage in Scotland do we proceed on what you have called the normal view of indissolubility or not?—I may refer to the words that are used when a minister performs the marriage ceremony. The usual form is something like this: Do you promise and

covenant to be to her a loving, faithful, and dutiful husband until God shall separate you by death? I think that at every marriage service that I have been present at those words, or similar ones, have been employed: "till God shall separate you by death."

23,334. And when the answers are given the words are pronounced, are they not: "What God hath joined together let not man put asunder"?—Yes.

23,335. Now it has been suggested on this Commission that that cannot be consistently done when we allow a divorce for desertion and adultery. Do you understand that position?—It seems to me that a very close parallel is that when a minister is inducted into his office, he is inducted into his office as a minister of the Church of Scotland for life; but there lies in the background the assumption that he might be deposed for misconduct. We do not think it necessary to mention it at that time and it is better we should not. But in both cases you use the form of permanence.

23,336. In Scotland we had a Presbyterian Church established from 1560 to 1660?—Well, from—

23,337. But if you take the first episcopacy—the episcopacy pure and simple in Charles II.?—Yes.

23,338. Then we had a system which was episcopacy, then presbytery, between 1660 and 1669?—Yes.

23,339. And we have had presbytery established since. Has there been during all that period any proposal in Scotland known to you, or ever mooted, to alter our law and to abolish either of the grounds of divorce?—I have heard nothing since that very important declaration of the Westminster Assembly to the effect that the confession which includes divorce for desertion is in no wise contrary to the doctrine of this Church. I think that closed the question.

23,340. And you have instanced as one of the writers in favour of divorce by desertion one of the greatest scholars in the Scotch Episcopal Church—Forbes?—Yes, but mark, in the first Scotch episcopal period. John Forbes was a contemporary of the Covenant, and he died in 1648. That struck me as very remarkable.

23,341. In addition we have had from the Established Church of Scotland a large number of secessions. Have you ever known any of the seceders who have expressed a view on this question—even the narrowest of them?—No, there was a fulmination of the General Assembly about the close of the 16th century in which reference was made to divorce of an irregular kind which went beyond the word of God. But that is the last so far as I know.

23,342. Do you know what that referred to?—No, I do not. I do not know how far that went or how much it amounted to.

23,343. On the other hand, Professor, there has not been any agitation, has there, in Scotland, to extend the grounds of divorce?—No, I make that clear. I know of no agitation to that effect.

23,344. I do not understand how you can say until the question is discussed, as you do on page 10 of your print, that the General Assembly would almost certainly oppose the recognition by the civil law of additional grounds. If the thing has never been brought up I presume it is a matter of opinion?—It is a matter of private opinion based on conversations I have had with some ministers, and on a general knowledge of the psychology of the General Assembly.

23,345. Of course, if it came up it would be discussed, and men's minds would be known?—Yes.

23,346. In reference to the effect on Scotch people of the existence of divorce, you said you did not think it had affected their sense of the value of marriage. Well, you have heard many suggestions made on the subject of the views of the Scotch people. Did you ever hear anybody suggest that idea?—No. Marriage is held, except in the very lowest strata of the population, in the very highest respect in Scotland, and I think even down in the lowest strata a vast importance is attached to the possession of the marriage lines. I may say this also with regard to the sanctity of marriage. I have heard it suggested that in Scotland we look on it as a civil contract merely. I should like to say the form of words used in the marriage ceremony is like this: Marriage is an institution

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founded by God in the days of man's innocency; consecrated by the presence of our Lord at the marriage of Cana of Galilee, and further hallowed by being an emblem of the relationship that subsists between Christ and his Church.

23,347. And you think that is a safe ground to leave it on?—Yes.

23,348. Without holding that it is a sacrament?—I do not understand what is meant by calling it a sacrament. I know it carries indissolubility with it, but I frankly confess that the application of the idea of sacrament to marriage is obscure.

23,349. Of course, if any alteration was made by the State of Scotland by way of extension, the Church of Scotland would have to consider that for itself?—That is so, and would doubtless consider it very carefully. In that connection I should think it very proper that the opinion of the two National Churches should be asked, representing, as they do, so very large a body of Christian opinion and sentiment—with regard to any proposed changes in the law.

23,350. And do you think the Church should maintain the stiff attitude of declining to consider any proposals, or that it should be disposed, if it does not violate any essential principle, to endeavour to harmonise its position with the State?—I am of opinion that it is the duty of the Church to try and live peaceably with the State. If a question of principle emerges and a reconciliation of view is impossible there may be a rupture. But, speaking generally, it is their duty to go together. At present, I believe, that is felt very strongly in Sweden. In Sweden at the present moment I think the civil law is lax, and they are trying to get divorce for desertion after a prolonged period—something like the Scotch law.

23,351. At the present moment there is no civil law in Scotland which involves people who avail themselves of it in being denied the privileges of the Church of Scotland?—I do not quite catch your point.

23,352. There is no civil law in Scotland, just now, is there, which, if people avail themselves of it, will involve their losing the privileges of the Church of Scotland?—I do not think so. We look on civil marriage as very regrettable and there may be—

23,353. That is not the point, Professor?—No.

23,354. We know in the last General Assembly of the Church of Scotland you took a certain line on the Deceased Wife's Sister?—Yes.

23,355. That did not involve denying the privileges of the Church of Scotland to persons availing themselves of that Act?—The Church of Scotland felt it was absolutely free to determine its own line of action; and after careful consideration decided that a minister uniting in marriage such a person, or a person contracting such a marriage, should not be liable to disciplinary censure.

23,356. Yes, there is no civil law that a man should be denied the privileges of the Church?—No.

23,357. If extension were granted the Church would have to consider that for themselves?—Yes.

23,358. Because one of the terms of the contract between it and the State under which it is a spiritual society is in Articles 5 and 6, chapter 24, of the Westminster Confession, allowing divorce only for adultery or desertion?—Yes.

23,359. And if the State introduced a change of that contract the Church would have to consider that?—Yes.

23,360. It would have to consider whether it should not, as it did in 1660 and 1690 give up establishment?—Yes. The result is not a foregone conclusion. I can imagine extensions being granted by the civil law so prejudicial to society that the Church would excommunicate members that took advantage of those privileges. That state of things might be reached.

23,361. And in 1660 that happened when episcopacy was introduced and 400 ministers left?—Yes, but I should hope the State would be reasonable and not adopt an extreme view.

23,362. And it happened in 1689 when it introduced Presbytery that a great many ministers abandoned their livings?—Yes.

23,363. And it happened to some extent in 1843. Now is it your view that the guilty spouse should be debarred from marrying the paramour either in church or anywhere else?—I am very strongly of that opinion. I am strongly of opinion that that should become the law of the land. I understand in Scotland there is power in the hands of the Court of Session to prohibit the guilty spouse from marrying the paramour after divorce; and though I can understand a very great difficulty in doing it in a concrete case where it would seem to be for the good of the divorced party to allow such a marriage, I am strongly of opinion it is desirable that these powers should be exercised and that the guilty parties should know that it will not be possible for them to re-marry after a divorce.

23,364. Do you think that removes a great danger in the divorce law, namely the temptation in order to obtain marriage with a favoured person other than the wife to commit adultery with her expecting divorce and a power of re-marriage?—Yes, I think it would be an admirable provision and a preventive of evil.

23,365. I notice in Archdeacon Paley's Moral Philosophy, volume one, when talking of divorce he advocates that view, but he advocates another view also. He says on page 329, "Of this country" that was before 1857, when there was no machinery "in conformity to our Saviour's injunction, confines the dissolution of the marriage contract to the single case of adultery in the wife; and a divorce, even in that case, can only be brought about by the operation of an Act of Parliament"—and so on. Then, "It has lately been proposed to the legislature to annex a clause to these Acts, restraining the offending party from marrying with the companion of her crime, who, by the course of proceeding, is always known and convicted; for there is reason to fear, that adulterous connections are often formed with the prospect of bringing them to this conclusion; at least when the seducer has once captivated the affection of a married woman, he may avail himself of this tempting argument to subdue her scruples, and complete his victory; and the legislature, as the business is managed at present, assists by its interposition the criminal design of the offenders, and confers a privilege where it ought to inflict a punishment. The proposal deserved an experiment." You think that is sound sense?—Yes.

23,366. Then he goes on further, "But something more penal will, I apprehend, be found necessary to check the progress of this alarming depravity. Whether a law might not be framed directing the fortune of the adulteress to descend as in the case of her natural death, reserving however a certain portion of the produce of it, by way of annuity for her subsistence (such annuity in no case to exceed a fixed sum) and also so far suspending the estate in the hands of the heir as to preserve the inheritance to any children she might bear to a second marriage, in case there was none to succeed in the place of their mother by the first; whether, I say, such a law would not render female virtue in higher life less vincible, as well as the seducers of that virtue less urgent in their suit, we recommend to the deliberation of those who are willing to attempt the reformation of this important, but most incorrigible class of the community. A passion for splendour, for expensive amusements and distinction, is commonly found in that description of women who would become the objects of such a law, not less inordinate than their other appetites. A severity of the kind we propose applies immediately to that passion." That is Scotch law?—Yes.

23,367. Namely that the person divorced should be treated as dead?—Yes.

23,368. And if under a marriage contract they have given the income of their estate, as they generally do, to the husband, and the capital to the children, they are absolutely left without any estate at all; and if there is no marriage contract, they are left with what is called the dead's part, namely, the portion of the estate that they can by law dispose of. Apparently the Archbishop had evolved it out of his own inner consciousness, but does not refer to its having been done anywhere. Do you think that would lead to a

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check, to wrongdoing?—I think it is a very wise provision.

(*Chairman.*) You remember, Lord Guthrie, that the court has power to vary any settlements under the Divorce Act, and make any provisions about property that it chooses.

(*Lord Guthrie.*) But that would not entitle the court to deprive a wife absolutely of all provision.

(*Chairman.*) I think it can go as far as that.

23,369. (*Lord Guthrie.*) You are not in favour of the proposal that has been made of the universal civil marriage?—I dislike that proposal very much.

23,370. Why?—I think it would have the effect in time of secularising the ceremony of marriage. I have taken part in a marriage in Switzerland where a marriage really takes place before the Maire and the benediction follows afterwards; and what I felt was that this was very seriously diminishing the effect of religion upon the whole transaction. It was relegating it to a subordinate place as a half-way house, perhaps to its general disappearance.

23,371. Just one more question of experience; can you say whether the provisions for enabling the poor to avail themselves of the remedy of divorce are substantially looked upon as sufficient in Scotland to ensure that result?—Well, I cannot speak to anything except the fact that there is no difficulty in procuring it; because I have spoken to one or two city ministers who have told me that they occasionally have a case coming before them of a poor person asking to be certified as entitled to public assistance to enable them to carry out—

23,372. But you have never heard any complaint?—No, not as to the difficulty; and I should imagine if a pauper can get it—a man certified by the Kirk Session—that justice should be available practically for all.

23,373. (*Sir George White.*) I will not detain you more than a minute, Professor. As a matter of curiosity I should like to get a little more clearly whether you do or do not agree with St. Augustine on the question of telling a lie under any circumstances. I think you said you agreed and previously you did not agree?—Well, I do not think it is very relevant. You cannot really answer the question without going into different types of ethical theory.

23,374. I was going to suggest, is not motive the essence of the sin or otherwise?—Well, you see it all depends on a general view of ethical theory. The utilitarian probably would say it was lawful in some cases; the intuitionist takes the other view. Professor Calderwood, who was Professor of Philosophy in Edinburgh, and was my old teacher, held very strongly that it was wrong, in all circumstances, to tell a lie, and I think the latter is the Christian view.

23,375. Just a question with regard to lunacy that Lord Gorell put. In paragraph 10 in your proof you say: "The duty of the State in relation to the dissolution of marriage is, not to make the Christian ideal compulsory, but to make provision for the relief of those who suffer injustice in marriage in so far as this shall be compatible with the general interests of society." I might give you a case within my own knowledge and ask you a question upon that case—I gave it to one witness before—where a young professional man of 25 years of age married—of a very good social position—and after the wife's confinement she lost her reason and after two or three years was declared to be hopelessly insane; quite harmless, but she has been kept in a lunatic asylum for 30 years and he has been compelled to live a life of celibacy ever since. Would you give a judge any discretion in a case of that kind?—Well, I am very unwilling to abandon my principle, and you notice I said that it was where grave injustice was suffered that they were entitled to relief. I cannot personally acquiesce in the view that that should be

given except where there has been grave moral delinquency. But with regard to your last point I think my own idea would be that the Court of Divorce might be allowed certain discretionary powers. I think that would be necessary in working any modified law. But as at present advised I must adhere to the view that calamity, of which insanity is an illustration, is to be borne as being the will of God and intended to work together like other calamities for our good.

23,376. I suppose you would agree that in all probability the question of divorce has not been agitating the Scotch Church partly because of the fact that desertion is allowed as a reason for divorce, and partly because of the ability of the poor to get the same remedy as the rich—neither of which exists in England?—Yes, I think the latter is very important.

23,377. And that has had a material influence on Scotch opinion?—I may say with regard to the question of costs I do hold very strongly that law in this matter ought to be within the reach of the poorest, just as I hold very strongly that the very best medical skill, and the best surgery, ought to be at the disposal of the poorest.

23,378. Only one other question, You have laid down a principle that the State cannot legislate exactly for a community as though it was an ideal Christian State. Is there such a thing as a Christian State?—Well, of course, a Christian State may be taken in two senses. A State composed of citizens, all of whom are good Christians would be a Christian State; but we employ it usually in the sense of a State that makes a profession of the Christian religion, and attempts to embody Christian principle in its legislation; and I take it it is the latter you refer to.

23,379. But you would not regard that as an ideal Christian State?—No, it is not. The ideal would be in which all the citizens conform their lives to the principles of the Gospel.

23,380. The ideal Christian State is where every individual citizen is a true Christian?—And that cannot be reached in time or on the earth.

23,381. (*Chairman.*) I want to ask a question on the proposition as to preventing the marriage of the two guilty people together. You remember what you said about that?—Yes, I said I thought it should not be allowed.

23,382. I fully follow that with regard to people who have some social position. Do you think it would be quite the same if you are dealing with a lower class of people with whom social position was unimportant? Might not they say: We do not care about this bar; we will live together just the same?—Yes. I know some ministers working in poor districts have felt there is great force in these considerations; and I have known a minister who has married a guilty party though he knew it was against the law just because he knew it would save the woman from sinking to lower depths.

23,383. What I was rather venturing to suggest was that as a check and a preventive of wrong it would be far more operative among the better class of society than it would lower down. That is true, is it?—Yes, I think it is.

23,384. But I suppose, logically speaking, you would apply it throughout?—Yes.

23,385. Though it might lead to some illegitimate unions in the lower classes?—Yes, I think that would be my view on the whole.

(*Chairman.*) That is the only matter, I think, Dr. Paterson. I should like to thank you very much on behalf of the Commission for the very great value of your evidence and your kindness in coming and giving it to us, and also for the evident pains you have taken in preparing it. We shall value it most highly.

Adjourned.

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The following are notes supplementary to the memorandum of Rev. Professor Paterson on Marriage and Divorce:—

The Rabbinical Interpretation of the Law.

"The school of Shammai says, 'No one shall divorce his wife unless he shall have found in her something scandalous (*quid inhonesti*)'; the School of Hillel says, 'even if she have burnt his food (*etiamsi combusserit decoctum ejus*)'; Rabbi Akiba says, 'even if he find another more handsome, as it is written, Deut. 24, 'and she find no favour in his eyes.' The Jewish tradition supported the opinion of Hillel, though the authorities discouraged capricious divorce. Said Rabbi Eleazar, 'Even the altar sheds tears when a man divorces the wife and companion of his youth.'"

Tractate Gittin, *Legum Mishnicarum Liber* (ed. Surenhusius), iv. p. 358.

The meaning of "putting away" (ἀπολύειν) in Matthew v. 31, 32, 199.

"It is contended that in this case a man may put away his wife, i.e., may separate her from bed and board, but still consider her as much his wife as to be incapable of marriage with another. But I do not know of any evidence that in our Lord's time there had been invented this method of acknowledging a woman to be a wife, but treating her as if she were not."

"It is clear from the Old Testament quotation that the breach of the marriage does not so much consist in the marrying again as in the separation by man of those whom God had joined together; consequently the sin is as much committed when man ordains a separation from bed and board as when a new marriage is sanctioned."

Salmon, *The Human Element in the Gospels*, pp. 128, 392.

Authenticity of the Addition in Matthew.

"It seems to me that St. Mark's version, which appears to disallow divorce without any exception, is more likely to represent the common source than St. Matthew's, which excepts the case of the adulterous wife. For it is much easier to account for St. Matthew's insertion of the words than for St. Mark's omission of them if they had been in the original." "I incline to the belief that our Lord uttered His precept against dissolution of marriage in the most general terms, and without allowance for possible exceptions; and that St. Matthew's addition was made in order to bring the precept into conformity with the usage of the Church at the time his Gospel was written."

Salmon, *op. cit.*, pp. 130, 191.

Ante-Nicene opinion as to re-marriage after Divorce.

"What then, sir," say I, "shall the husband do if the wife continue in fornication?" "Let him divorce her," saith he, "and let the husband abide alone; but if, after divorcing his wife, he shall marry another, he likewise committeth adultery."

Hermas, Pastor, Rev. 4, Mand. 4.

The canons referred to which sum up the strain of the early patristic teaching condemnatory of re-marriage of all divorced persons are as follows:—

"Women, who without any precedent cause have left their husbands and formed another marriage, shall be finally debarred from communion."

Synod of Elvira, Canon 8.

"Moreover, a believing woman, who shall have left a believing husband, and who seeks to marry another, shall be prohibited; and if she have married another she shall be debarred from communion unless he whom she left shall have departed this life, or perchance her infirmity render it necessary to give it."

Canon 9.

"As for those who overtake their wives in adultery, the same being young men, and believers, and forbidden to marry, it was resolved that as far as possible they be advised not to marry again during the life-time of their first spouses though adulteresses."

Synod of Arles, Canon 10.

But this judgment—viz., that even the innocent party to a divorce for adultery might not marry again, cannot fairly be regarded as the settled doctrine of the Ante-Nicene Church. On the critical view, the passages

in Matthew, if not authentic words of Christ, are at least a good authority for the attitude of the Church about 80 A.D., and they imply a total dissolution of the bond. In the third century Lactantius occupies the ground of St. Matthew: "That all calumny and occasion of deceit be removed, it is added that he is an adulterer who shall have married a woman divorced from her husband, and he who shall have divorced his wife *save for the crime of adultery* in order to marry another."

Divine Institutes, vi. 23.

Grounds and Reasons for the Rigorist view against Re-marriage.

For the influence of the sacramental idea on the indissolubility of marriage reference may be made to St. Augustine, *De Nuptiis et Concupiscentia*. He does not deny a relative justification of the secular power in allowing what, according to our Lord, "even the holy Moses permitted to the Israelites because of the hardness of their hearts"; but he holds that by the law of the Gospel it is adultery to take advantage of these provisions.

Without doubt, the matter of this sacrament is that a man and woman joined in matrimony shall abide therein inseparably as long as they live, and that it is unlawful, save for the cause of fornication, that a separation of the spouses should take place. . . . Between living spouses there remains a certain conjugal bond, which neither separation nor a second marriage can dissolve." The case is parallel to baptism, where "the soul of an apostate, even if it lose its faith, does not lose the sacrament of faith, which it received in the laver of regeneration" (i. 11).

Grounds of Divorce other than Adultery.

"The causes of divorce (other than adultery)," says Suicer, "which were recognised in civil law, were never admitted by the Church. Those, accordingly, who carried out a divorce according to the licence of the civil law, and contracted a second marriage, were regarded as bigamous persons by the Church, and subjected to penalties under Canon Law" (*Thesaurus*, i p. 895). He supports this statement by reference to Athenagoras, *Plea for the Christians*; Theodoret on Romans vii. 2, 3; Chrysostom, Hom. x. on 1 Timothy iii. 2, and numerous canons.

The statement represents the general opinion and practice, but is subject to two qualifications.

(1) Some fathers were disposed to allow other grounds of divorce, provided divorce did not entail the right of re-marriage. In his Exposition of the Sermon on the Mount St. Augustine favours the extension of the idea of adultery, so as to include spiritual fornication, although in his "Retractions" he indicates the opinion that he had been too dogmatic on the point. "Whether on account of this (spiritual) fornication it is lawful to put away a wife is a most obscure question" (ii. 19).

(2) There is a certain amount of evidence for the opinion that desertion entailed the right of divorce with re-marriage.

(a) St. Paul in the opinion of many exegetes, allowed it under certain conditions in the case of mixed marriages (1 Corinthians, vii. 15).

(b) The case mentioned by Justin Martyr in his Second Apology is governed by the apostolic injunctions. A Christian woman was persuaded by her friends to adhere to an adulterous husband. When he left her and went to Alexandria, she terminated the union by legally divorcing him, and put herself in a position to marry again. Justin writes as if her action throughout was correct.

(c) The Commentary on the Epistles of St. Paul, formerly circulating under the name of St. Ambrose, allows divorce with re-marriage for desertion, and even extends the scope of the

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[Continued.]

apostolic precept. This Commentary, regarded as the best on the Pauline Epistles before the Reformation, probably belongs to the end of the fourth century (*Texts and Studies*, vii. 4).

"If an unbeliever depart through hatred of God, the believing spouse will not be guilty of the dissolution of the marriage. A brother or a sister is not in bondage in such a case. That is, reverence for the marriage is not due to him who spurns the author of marriage. For it is not a valid marriage which is without the fear of God, and therefore it is not sin for the spouse who is put away on account of God if he be married to another. For contempt of the Creator dissolves the law of marriage in respect of him who is deserted, so that he may not be accused if joined to another. . . . For if Ezra made unbelieving wives and husbands to be put away, so that God was gracious and not angry if they took others from their own race, how much more will one be at liberty, in the case of an unbeliever departing, to marry at will a man of one's own faith" (*legis suae viro*).

On 1 Corinthians vii.

The Practice of the Eastern Church.

Since the 11th century the rules of the Eastern Church have been as follows:—

- (1) No clergyman is to be condemned for giving the benediction at the marriage of a divorced woman, when the man's conduct was the cause of the divorce.
- (2) Women divorced by men whose conduct has been the cause of divorce are not to be blamed if they choose to marry again, nor are the priests to be blamed who give them the benediction. So too with regard to men.
- (3) Whoever marries a woman divorced for adultery is an adulterer.
- (4) Any priest who gives the benediction at the second marriage of parties divorced by mutual consent shall be deprived of his office."

Art. "Marriage," *Dict. Christ. Antiquities*.

Roman Catholic conception of "the Pauline Privilege."
See Bellarmine, *De Controversiis Christianae Fidei*, Tom III.

His proposition is that "a marriage of unbelievers can be dissolved even *quoad vinculum*, if one of the spouses be converted to the faith, and the other be unwilling to cohabit without despite to the Creator." He gives as his authorities 1 Corinthians vii. and the Canon Law. To the objection that it conflicts with Christ's absolute prohibition of divorce, he replies that Christ's words did not refer to marriages in which one party was outside the covenant. Marriages contracted by infidels are on a different footing from those contracted by baptized persons. "The former, though valid, are not sacraments, and therefore they are wanting in the most potent ground of indissolubility."

The Law of the Westminster Confession.

"In the case of adultery after marriage, it is lawful for the innocent party to sue out a divorce, and after the divorce to marry another, as if the offending party were dead."

"Although the corruption of man be such as is apt to study arguments, unduly to put asunder those whom God hath joined together in marriage; yet nothing but adultery, or such wilful desertion as can no way be remedied by the Church or civil magistrate, is cause sufficient of dissolving the bond of marriage, wherever a public and orderly course of procedure is to be observed, and the persons concerned in it not left to their own wills and discretion in their own case."

(Chapter xxiv., "Of Marriage and Divorce.")

Note appended by request.

JOHN FORBES ON DIVORCE.

In his "Theologia Moralis," referred to in the evidence, Forbes deals at length with the subject of

divorce. He contends that in both kinds of divorce active and passive, the marriage bond is dissolved in such a way that the innocent party may, in the lifetime of the other, contract a new marriage (Bk. VII., cap. 14). In cap. 15 he discusses the question "through what kind, and under what circumstances of desertion, the deserted party is freed from the bond." A translation of a portion of this chapter is appended:—

I. To this question Gregory (Caus. 28, qu. 2, "Si infidelis") replies: "if the unbeliever depart through hatred of the Christian faith, let him depart; I say, that is if he has refused to be with a believer" (Amb. 28, qu. 1, "Si infidelis"). But what if a Christian desert a Christian, or an unbeliever a believer, not through hatred of the Christian faith but through hatred of his spouse, or for some aversion, or from desire of another marriage, is not the deserted party freed, since the apostle makes no mention of reason, but merely says, "But if he departs, let him depart; a brother or a sister is not subject to bondage in such a case." I reply that three points must here be considered: 1, what is meant by the term "departure"; 2, who departs; 3, for what reason.

II. What departure is is more easily understood from the apostle's contrast: the apostle contrasts habitation, in a willing frame of mind, with a believing spouse, with departure. "If any brother," he says, "has an unbelieving wife, and she is pleased to dwell with him (*συνευδοκεῖ οἰκεῖν μετ' αὐτοῦ*), let him not put her away; and a woman who has a believing husband, and he is pleased to dwell with her (*καὶ αὐτὸς συνευδοκεῖ οἰκεῖν μετ' αὐτῆς*), let her not put him away." He makes another contrast:—"But if the unbeliever departs (or separates himself), let him depart (or separate himself)" (*εἰ δὲ ὁ ἀπίστος χωρίσθῃ, χωρίσθω*); a brother or a sister is not subject to bondage in such a case." From this, understand what the apostle means by the term "departure": certainly he departs from a believing partner who is not pleased, or, does not consent, to dwell with a believing partner; or positively, who is pleased to depart from a believing partner without due cause.

III. It is the duty of a spouse to dwell with his spouse. Moreover *οἰκῆται*, that is dwelling, includes food, clothing, share of the marriage-bed with one's partner, according to circumstances, and with due propriety (Exod. xxi. 10, 11). Secondly, it is the duty of a spouse to fulfil these duties (*μετ' εὐδοκίας*) with proper complacence, that he may do all with a friendly and willing mind, in a conjugal and not unfriendly spirit. The third duty is that it is incumbent on one who has a believing spouse to be pleased to dwell with that spouse, that is, in such a way as it is necessary with a Christian husband or wife; but for one who has a Christian husband or wife it is not necessary, in order to retain that partner, to embrace the Christian faith, for even the believer is ordered to retain an unbelieving partner who is willing to cohabit, but it is necessary freely to allow the Christian partner to profess his faith and religion; likewise that he should not assail the God of the Christians or their religion with blasphemies; for he who is well pleased to dwell with a believing partner will not set himself to draw that partner away from faith and sanctity, and will abstain from blasphemous conversation against Christ, though he himself does not worship him; in what other way could he be said to be willing to dwell with her complacently (*συνευδοκεῖν οἰκεῖν μετ' αὐτῆς*), at least on this understanding, that she is a Christian?

IV. Now an unbeliever deserts a believer, firstly, if he deny her food or clothing or the marriage-bed, and actually does so *μετ' εὐδοκίας*, that is, with deliberate and fixed approval of his denial, for it is not regarded as divorce if, on account of some sudden quarrel, partner leaves partner through anger, or thrusts her from home for a time, as sometimes happens in experience, if an honourable reconciliation follows and repentance is not too long delayed. For in this passive divorce differs from active; for even one act of adultery is sufficient reason for active divorce, but desertion, the ground for passive divorce, is not some

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[Continued.]

single simple short act (otherwise there would be desertions and divorces daily even as between believers). Also the apostle orders those departing thus to attempt and await reconciliation, and denies that they are at liberty at once to fly to a new marriage (1 Cor. vii. 10, 11). But it is the deliberate pertinacious refusal to return to a believing partner whom it pleases him to desert and to order to keep her own affairs for herself, and a refusal to change his opinion. Secondly, he is a deserter who indeed shares the three things mentioned—food, clothing, and bed—but does so *ἀνευ εὐδοκίας*, without proper complacency. I am not talking of those less serious quarrels and disputes which can by chance arise even between the most loving partners, and are soon settled, but I am dealing with those partners who, though they have common food, clothing, and bed, bestow these things the one on the other in no conjugal, but in a perverse, frame of mind, lying in wait for a partner's life with poison or sword or some such thing, or even setting a trap for the chastity of a partner, tempting her to commit adultery with others, or agreeing with any who do set traps. For what does departure from conjugal faithfulness consist in, outside of the case of adultery, if not in this? Or who would say that such an one is well pleased to dwell with his partner? You will say that many believers too dwell with their partners *ἀνευ εὐδοκίας*, without good pleasure, nay rather with extreme displeasure, on account of their partner's folly. I reply that that displeasure is nothing other than dissatisfaction with the inconveniences of their marriage, keeping itself, however, within bounds, that it may not break out into a diabolical intention to kill their partners, nor drive them to entrap the life or chastity of the partner. But with that displeasure is joined Christian complacency and patience, through which partners resolve not to desert. Gratianus produces a statute in the Elbertinian Council, at Vermeriae, that a man is allowed to put away a wife whom he has proved to be guilty of a plot against her husband's life, and to marry another if he so desire (Caus. 31, qu. 1, "Si qua mulier"). Thirdly, he is a deserter who, though he provides food, clothing, bed for his believing wife,

and does not plot against her fleeting life, yet does not consent to dwell with a Christian, as a Christian, yet either insolently and obstinately blasphemes that famous name, from which we are named Christians, like those impious rich men (James ii. 7), or by wicked importunity seeks to turn the believer from the Christian faith and lure her to apostasy or any other crime. For this is not to consent to dwell even with a Christian. To this view tend those verses (in glossa ad cap. "Quanto"—extra de divortiiis):—"Desert one who despises you, or wishes to blaspheme, or drags you, a believer, to some mortal crime, for thus previous bonds are instantly broken." Add this, that the note orders one to desert a plotter against life or chastity: the meaning is that you should consider yourself deserted and freed from the rule of that deserter. We understand these verses in that sense. And now as to departure itself.

V. The departing party is an unbeliever for this reason, that if a believing partner complain before the Church of a Christian spouse, as deserting one innocent, and the matter is certain and established, that deserting party must be warned to return to the partner under penalty of excommunication: for he who has ceased to make provision for his own, especially those of his own household, is not to be reckoned among the number of believers (1 Tim. v. 8). If any man show himself persistently disobedient to the warnings of the Church he is to be reckoned as among the heathen or the publicans (Matt. xviii. 17). And so the deserted party will be declared free from the yoke of the deserting party, whether the marriage was contracted and consummated before baptism or by baptised persons, even if the partner is not freed from the rule of the excommunicated party for some reason apart from the marriage.

VI. The apostle does not explain "cause of desertion," but lays down the general principle that if the unbeliever depart the believer is freed from the unequal yoke. Besides anyone who, setting at naught the rules of Christian discipline, persistently deserts his innocent wife, is deservedly reckoned an enemy to the Christian faith and an insulter of God's legislation.

Winchester House, St. James's Square, London, S.W.

THIRTY-FIFTH DAY.

Wednesday, 29th June 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

THE LADY FRANCES BALFOUR.
THE HON. LORD GUTHRIE.
SIR WILLIAM R. ANSON, Bart., M.P.
SIR FREDERICK TREVES, Bart., G.C.V.O., C.B.,
LL.D., F.R.C.S.
SIR LEWIS T. DIBDIN, D.C.L.

SIR GEORGE WHITE, M.P.
HIS HONOUR JUDGE TINDAL ATKINSON.
MRS. H. J. TENNANT.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.
THE HON. HENRY GORELL BARNES (*Secretary*).

(*Chairman*.) I want to put in one or two things. I want to get it on the notes that there is put in now, as it is our last day of meeting, this volume of the National British Women's Temperance Association's resolutions. I think you have already had some put in. Those that are put in are marked; those that are still to go in are in the bundle. They are all on the equality of the sexes point. In due course the appendix will include one of these, with the names of all the branches that support it. Then there is another lot of resolutions of the National British Women's Temperance Association, which they do not send in common form but in a short form of their own, about the equality of the sexes. Those will be treated

in the same way in the appendix, and a list put in. Then there is a set of resolutions received from a number of other associations, some of which deal with the equality of the sexes point, and some are protests against any facilities, and some contain other forms of resolution. I do not propose to go through them now; I propose to put them all in the appendix with their names, and we can study them at a later time. It is desirable that the people who have sent in resolutions of varying characters should know that they have been placed before the Commission, and that in due course they will be studied, and probably printed, and duly considered. I think you may take them shortly in that way.

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Mr. E. E. STRINGER.

[Continued.]

Mr. ERNEST EDWARD STRINGER called and examined.

23,386. (*Chairman.*) You have not sent in a formal proof because you have only come to give us some corrected figures?—That is so.

23,387. You are one of the officials of the Home Office?—Yes.

23,388. You have been delegated to examine into the question of the returns of separation and maintenance orders?—Yes.

23,389. I believe that was in consequence of certain statements made in the evidence of Mr. Roberts, a witness we have had before us?—That is so.

23,390. In consequence of a suggestion made after looking into the matter carefully and thoroughly, I believe you communicated with the whole of the magistrates' clerks in the country and have had returns made which you have tabulated in a short form?—Yes.

23,391. It gives the number of the orders granted to wives, that is separation orders?—Yes.

23,392. The number granted with provision for payment of alimony in 1907 was 6,559?—Yes.

23,393. For 1908, 6,535?—Yes.

23,394. For 1909, 4,794?—Yes.

23,395. That was after the operation of the suggestions in the case of *Dodd v. Dodd* had become manifest?—Yes.

23,396. Those without any provision for payment of alimony, being separation orders simply, were 175 in 1907, 162 in 1908, and 215 in 1909, is that right?—That is right.

23,397. Therefore, the total number of separation orders granted to wives was 6,734 in 1907, 6,697 in 1908, and 5,009 in 1909?—Yes.

23,398. Underneath that you put orders granted to husbands; those are separation orders under the Licensing Act?—Yes.

23,399. With provision for payment of alimony the number was 269 in 1907, 278 in 1908, and 213 in 1909?—Yes.

23,400. Without such provision—that is without any alimony provision—the number was 4 in 1907, 11 in 1908, and 5 in 1909?—Yes.

23,401. The total number granted to husbands, therefore, is 273 in 1907, 289 in 1908, and 218 in 1909?—Yes.

23,402. The total number of separation orders granted, adding husbands and wives together, was 7,007 in 1907, 6,986 in 1908, and 5,227 in 1909?—That is right.

23,403. Turning to maintenance orders which have no separation in them, only maintenance, have you those separately?—Yes.

23,404. The total number of maintenance orders granted without provision for non-cohabitation was 547 in 1907, 901 in 1908, and 2,014 in 1909?—Yes.

23,405. Showing the operation of the way in which they have been worked?—Yes.

23,406. The total number of separation orders granted containing provision for payment of alimony—is that on the previous page?—They are included on the previous page.

23,407. This is merely bringing in those that have alimony?—Yes; they are not separate orders, they are part of the previous page.

(*Sir William Anson.*) 6,828; what are these?

(*Chairman.*) Total of separation orders granted containing provision for payment of alimony.

23,408. (*Sir William Anson.*) To husbands or wives?—Yes, 6,559 to wives and 269 to husbands.

23,409. (*Chairman.*) Some did not contain provision for the payment of alimony—179 in 1907, 123 in 1908, and 220 in 1909?—Yes.

23,410. The total number of orders containing provision for payment of alimony was 7,375 in 1907, 7,714 in 1908, and 7,021 in 1909?—Yes.

23,411. Just to get a comparison or two before the Commissioners, I daresay you remember Mr. Roberts was asked this at Question 8,353: "You are going to give us those. Let us get it generally, it is quite enough. How much, judging from what you have gone into yourself, should you estimate was the percentage of the 7,158 that might be put down as

"merely maintenance orders?—(A.) I should think "probably 25 per cent., but I have no data." That was for 1907?—Yes.

23,412. I daresay you remember in the Civil Judicial Statistics for 1907 the total number of separation orders for 1907 was put down as 7,158?—Yes.

23,413. He is asked how many of those 7,158 were maintenance orders, and he says about 25 per cent. You have gone through this, and find that for 1907 the total number of separation orders granted was 7,007?—Yes.

23,414. That is, roughly speaking, 150 less than the statistics originally show?—Yes.

23,415. Nothing like 25 per cent.?—No, about 2 per cent.

23,416. This is after verification and correspondence with a number of clerks, to be sure you were getting it right?—Yes.

23,417. In the Criminal Judicial Statistics there was an entry called maintenance orders under the Married Women's Act and the Licensing Act for 1902. The number of orders was 7,543. There was some little difficulty in appreciating at the time why that figure was not 7,158. I believe you can explain that?—The first figure you mention is the number of orders containing provisions for maintenance with or without separation.

23,418. That is to say, it included separation orders?—Yes, if the order contained provision for maintenance, but not without.

23,419. Which have maintenance in them?—Yes.

23,420. The lower figure, 7,158, is those which have got separation in plus maintenance?—Yes, or separation without maintenance.

23,421. That is the explanation?—Yes.

23,422. Have you devoted a considerable amount of time to this?—A large amount of my official time. I have had a tremendous amount of correspondence with most of the clerks.

23,423. I believe you found it necessary to make a slight correction of the figures by adding 18, 16, and 16 orders because a clerk had returned "nil," and you found on investigation that there ought to have been some there, and therefore you got that put right?—Yes.

23,424. The figures you have now given us are the result of your active investigation?—That is so. With regard to the 7,543 in the Criminal Statistics, the first figure, that is the number of applications for maintenance or separation where maintenance is asked for at the same time as separation.

23,425. It is the number of orders which have maintenance in them?—That is so.

23,426. The other includes some which have no maintenance, but most of them have?—Yes.

23,427. The greater part have. The 7,158 is only separation orders?—Yes.

23,428. It compares with your figure of 7,007?—No. The first figure, 7,543, compares with 7,375, my figure for maintenance.

23,429. And the 7,158?—The 7,158 compares with 7,007.

23,430. That makes it plain, so that the 25 per cent. suggestion is entirely wrong?—Yes.

23,431. I do not think you can throw more light on it?—No. I heard the Licensing Act mentioned. The number of orders under the Licensing Act is not shown separately. It only gives the number granted to husbands under the Licensing Act.

23,432. The others are included?—In the orders granted to wives.

23,433. The wives' orders are included in the first page?—Yes.

23,434. The husbands' orders are kept separately?

(*Sir William Anson.*) Is there any explanation or reason for the great rise in 1909?

23,435. (*Chairman.*) The great drop?—Rise in maintenance orders.

(*Sir William Anson.*) The maintenance orders alone?

(*Chairman.*) Yes, the explanation is obvious, if you will allow me to say so.

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Mr. E. E. STRINGER.

[Continued.]

(The Chairman conferred with Sir William Anson.)
(Chairman.) I thank you, on behalf of the Commission, and I ought also to thank the Home Office, too.

I have no doubt you have had help in the trouble you have taken to put us in possession of the actual figures with regard to the matter.

Supplement to Mr. Stringer's evidence.

SEPARATION ORDERS.

	1907.	1908.	1909.
Orders granted to wives:—			
With provision for payment of alimony.	6,559	6,535	4,794
Without such provision - -	175	162	215
Total to wives - - -	6,734	6,697	5,009
Orders granted to husbands:—			
With provision for payment of alimony to wife.	269	278	213
Without such provision - -	4	11	5
Total to husbands - - -	273	289	218
Total separation orders granted.	7,007	6,986	5,227

MAINTENANCE ORDERS.

	1907.	1908.	1909.
Total maintenance orders granted without provision for non-cohabitation.	547	901	2,014
Total separation orders granted containing provision for payment of alimony.	6,810	6,797	4,991
Total orders containing provision for payment of alimony.	7,357	7,698	7,005

Mrs. HELENA MARIA LUCY SWANWICK called and examined.

23,436. (Chairman.) Who was it supplied your name to the Commission?—I understood that it was Mrs. Tennant.

23,437. Will you tell us to what extent you have had experience or become familiar with the questions upon which your evidence is given?—My experience has been that of an average private person as a rule. I have done a great deal of work among factory girls in Manchester, and working people there generally, and since I have married I have done a great deal of public work, in the way of public speaking. I have come into close contact with a great many working women; it is the working women particularly I have had to do with.

23,438. In Manchester?—In Manchester and the little place I live at, Knutsford, a little country town.

23,439. Historically famed by Mrs. Gaskell?—It is not very much like that now.

23,440. It is supposed to be?—Yes.

23,441. How long have you been engaged in that work?—Ever since my marriage, 20 years ago.

23,442. You first refer to the general principles upon which your evidence is founded? Will you kindly state what they are?—Yes, I wish to make them clear. The civil law, it seemed to me, should have nothing to do with marriage as a sacrament or with the question of sin. I think the confusion between religious and moral and civil law has made the divorce question the complicated and unsatisfactory question that it is now. It seems to me that every marriage should be, whatever else it is, a civil contract, and should be civilly contracted. I think from what I know of the working people, especially the lighter-minded of the very young people who marry nowadays, that they would find a civil marriage a rather more serious affair than going to church. There is a very common feeling that it is wrong and wicked, but somehow it does not matter, to break the marriage contract, because it is something quite remote from ordinary law.

23,443. Would your view be, whatever is done on this point, that there should be a compulsory civil marriage, leaving the parties to do what they wished afterwards as to a service of a religious kind?—Yes, that is my view.

23,444. You mention one or two points, and I want you to consider the matter from that point of view?—Yes, it seems to me the law should be concerned as far as possible to preserve monogamy, as monogamy is the ideal at which we aim, and when it fails to secure monogamy it should admit that it has failed. I put the three points which I think the law ought to consider, because up to now it seems to me those points have not been sufficiently considered. The welfare of the children, first of all, and then the social and economic position of women, because by marrying a woman abandons the social and economic position she may have and is helpless, and dependent largely on her marriage.

23,445. That is speaking more or less of the lower classes where there are no means except the working

man's wage?—Yes, even in my own class the social position comes in.

23,446. And the money often comes in?—Yes.

23,447. That applies when it is really a question of means?—Yes.

23,448. Lastly what do you say?—It seems to me at present the law, as it now stands, does not encourage monogamy, because, first of all, adultery is permitted in the married man.

23,449. I think you are rather passing from the point. You have three heads; you refer to the welfare of the children, the social and economic position of women, and a third point?—The domestic life of both partners. One has to admit that in order to secure the welfare of the children and the home, a certain amount of personal feeling has to be considered also. I mean the personal feelings of both the partners, the wife as well as the husband, ought to be considered.

23,450. In all those things, from your point of view, the State is most directly concerned?—Yes, that is what I mean.

23,451. You deal next with the questions which you have placed before us. First, jurisdiction. You mean the jurisdiction of the courts as they at present stand?—Yes.

23,452. What do you wish to say to us about that?—I think this should be taken in connection with the point I made just now. If the law is, as I consider it should be, mainly concerned to preserve monogamy, where it has failed to preserve it, it should follow the facts. As a matter of fact, what we do now is to pretend that monogamy exists, and where it does not exist, where one of the partners is not faithful, in the case of the man we allow practically polygamy, in fact we compel it, whereas I think, in order to preserve monogamy in fact as well as in theory, that as soon as it breaks down we ought to admit it and give relief.

23,453. Are you speaking of compulsion, because to a large class of the people the courts do not afford adequate facilities?—That is for the poor, but I am also speaking of the wife being unable to divorce her husband for unfaithfulness.

23,454. We will come to that. Your first view is, you regard the present position, in which poverty is a bar to divorce, as injurious to the institution of matrimony, because when people cannot obtain divorce, they tend to live promiscuously. You do not regard the misconduct of married people as preferable to divorce. That is one of the points?—Yes; it seems to me where people are too poor to get divorce, and where there is unfaithfulness it tends to degrade the marriage relation. The partner who has throughout remained faithful is likely to gradually come to think that she does not see why she should.

23,455. As you have had experience amongst the poor, do you find in fact that is so?—You have to remember poor people do not talk about what they know they cannot get. I have never found working women talk

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Mrs. H. M. L. SWANWICK.

[Continued.]

much about divorce because they put it out of their minds.

23,456. Do you find in fact this tendency to live promiscuously in consequence of the want of relief?—I think it tends to it.

23,457. Have you found that in practice?—I have heard women defend themselves by that very argument, by saying that for a long time they remained faithful, but they did not see why they should go on doing so, and I think that is very degrading.

23,458. That is very injurious to the institution?—Yes, and injurious to the women, of course.

23,459. Apparently they realise that there is no means by which they can get relief, and therefore it is excluded from their consideration?—That is what I believe.

23,460. Your next point is that separation orders are in many ways inequitable to women. On what ground do you take that view?—It seems to me apparently impossible to expect separated men should live continentally, and if they do not do so, it seems to me to constitute a very great danger to other women. A married man who is separated from his wife constitutes a very great danger to other women.

23,461. You put it thus in your proof: when a wife is separated from her husband, for cruelty (say) he can then live with another woman, but his wife cannot divorce him?—Yes; I had not put my first point I wish to make. If a wife is separated from her husband he can live with another woman, but even if that happens the wife cannot divorce him.

23,462. Is there some other point that you have in your mind. I did not follow?—No, I think that puts shortly what I mean.

23,463. You added that it would be a danger to the other women?—That was another point I had forgotten to note, but it is a very serious one.

23,464. Your second point is with regard to the woman's position. I am following your proof?—The husband can live with another woman with impunity, but if the wife yields to another man, she loses her allowance, and is helpless. If the wife commits adultery after her husband has been separated from her, although he may be faithless to her, she can get no remedy, and if she yields to the solicitations of another man she loses her allowance; being too poor, her husband cannot divorce her and she is at the mercy of the second man.

23,465. Have you in your experience found cases of that character?—Yes, I have, and the second man has deserted her and she has gone to a third.

23,466. The third point is with regard to married women's means of livelihood?—I think that is not sufficiently taken into account. The law more and more, and public opinion seems to be tending more and more to require that a married woman should be absolutely helpless economically, I mean a working woman. We know the laws are getting changed to take away a woman's means of livelihood.

23,467. I do not follow that. That is rather a novel idea to me?—We are familiar with it, the threat of taking away the work of married women.

23,468. Are you speaking of the married women?—It is one of the terrible things hanging over married women; they will be made absolutely helpless.

23,469. I did not follow what you were alluding to?—That is what I mean.

23,470. You say in such cases separation puts them in a helpless condition?—She cannot better herself. A man can get another employment; but if a woman is separated without divorce she cannot get married, which is her one trade.

(Lord Guthrie.) Do trade unions object to married women?

23,471. (Chairman.) Will you explain the point about non-employment more fully, so that there may be no misconception as to what you mean?—The Factories Act now makes it necessary for married women to be away from their work for a certain period, and teachers for instance, all over the country have to give up their work when they marry. It is being prevented all over the place, with married women everywhere, in the Civil Service, the Post Office; as soon as a woman marries she loses her trade.

(Lord Guthrie.) That is not legislation.

23,472. (Chairman.) By administration?—Yes, and by legislation; the Factory Acts do that, and I suppose most of us are familiar with the fact that Mr. Burns threatens to greatly curtail the labour of married women in mills. It is before us, that is the trend of public opinion.

23,473. That is a suggestion for their own benefit?

—So you say.

23,474. I was not saying anything; I was asking?

—So they say.

23,475. At any rate it drives them to rely upon nothing but marriage once they have become married?—Yes.

23,476. Therefore, if they are separated they are in a practically helpless position?—Yes; they have nothing but their allowance, if they have it, and it is very precarious and is often very small, and it leaves them with nothing to look forward to and no possibility of bettering themselves by effort.

23,477. Do you find, when you say the allowance is very small, that the magistrates make it an unreasonably small allowance, or take proper consideration of it?—I think my experience is not enough to say.

23,478. We have heard it suggested—I cannot remember by whom at the moment—that the magistrates do not make a fair allowance to the women?—They seem mostly to be very glad to get any odd jobs they can of a very poor sort, and work very hard for it.

23,479. Should you think that a mere separation order was in the interest of the children where the separation was of a lasting character?—I am entirely against separation being permanent.

23,480. Would you give us your reasons for that?—The same reasons as those I gave for increased facilities. I should like to see separations temporarily tried, and if after two years the couple decided they did not intend to come together I would like divorce to follow.

23,481. That would tend to the general improvement of the position of the woman and her children?—I do think so, indeed.

23,482. The next point is with regard to the publication of reports. Will you give us your views about that?—There was one particular point about separation. I seem to have put it all from the woman's point of view, but for the children it is a terrible thing that a man with a bad wife cannot divorce her; if he cannot he is unable to give the children a fair chance.

23,483. At present he has no remedy unless he can afford to go to the High Court?—No.

23,484. He has no magistrates' remedy except in the drunken case. He ought to have that?—Yes.

23,485. Or at any rate to have the High Court placed within his reach?—I think so, to give the children a chance.

23,486. May I go on to the next point, the publication of reports. Are you giving us a view merely on opinion, or have you had any experience on that point?—With regard to newspaper posters and headlines, my experience was chiefly with young people in clubs, and, of course, the ordinary experience of a woman who walks about the streets and sees the way people behave, and the things they call after women, and the kind of general way in which the loafing street boy and young woman, the gangs of young women and boys who loaf about the streets in the factory towns, look at these posters, and the effect they appear to have on their minds.

23,487. You say newspaper posters and headlines are frequently most offensive and a source of insult to women in the streets and railway carriages. That is your experience?—Yes.

23,488. You also make a point of publication in the interest of women?—I think it is a dangerous thing to have private hearing. I regard the check of public opinion as a very valuable one.

23,489. There is a difference between private hearing and flooding the country with publication of what occurs?—That is the distinction.

23,490. There is a distinction between having an open court and no publication in the papers?—Yes.

23,491. You are in favour of the open court?—Yes.

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23,492. But not of the publication of the details of the cases?—No, especially the flaring headlines.

23,493. Suggesting attractive reading?—Yes.

23,494. Suggesting you had better buy the paper to look and see. That is what you mean?—Yes.

23,495. You say in all cases where women and girls are involved, provision should be made for women to be present at the hearing. That is so at present. There is nothing to exclude women?—This is perhaps rather outside the exact question, but I have known cases where the court has been cleared of women and not of men. For instance, I was horrified to find a working woman I knew in Staffordshire who went for a certain case. When she had finished her case she was going to wait because there was a girl bringing what they call a "fathering" case up there.

23,496. An affiliation case?—Yes; and the court was cleared of women, and this elderly woman, a mother of a family, had to go out of court, and her son, who had come with a gang of collier lads, was allowed to stay.

23,497. That has been done out of consideration for women's interests?—So they say.

23,498. You think that is not good. Might it not raise a difficulty? You would not recommend young girls should be left in?—No.

23,499. It makes a delicate inquiry into the ages of the persons present?—They do not find the inquiry delicate when boys are concerned.

23,500. You would not advocate making the court open to young girls?—I am more inclined to make an age limit than a sex limit.

23,501. That is quite possible?—It seems to me possible.

23,502. That must be a matter of discretion?—Yes; but I feel strongly about the phrase we hear constantly, "out of our reverence for womanhood, we keep women from hearing these things." It is reverence for womanhood which makes me feel middle-aged and serious women ought to be present.

23,503. In regard to amendments of the law, you have a summary as to what you suggest?—I want to say one word about the constant phrase we hear of—publication as a punishment.

23,504. As a deterrent, not as a punishment?—I have even heard people say it serves them right, and it is a punishment to have their misdemeanours published. I regard that as mediæval. It is like public flogging, or anything else.

23,505. It has been mostly put before us on the ground that it is a deterrent to the commission of the wrong. Would your view be that it is not?—I cannot imagine it.

23,506. May I proceed to ask what amendment in the law you suggest?—The first I have given is as to persistent cruelty.

23,507. Your first one, I take it—although you have not put it in your proof—from what you have said, is to place men and women on the same footing?—Yes.

23,508. Then you proceed to enumerate the causes which should apply in both cases, I think?—I think, from the point of view of the whole family, the children, and the mother, and the home, persistent cruelty without any other causes ought to be enough. It is more likely to occur, of course, in the case of the man to the wife, although it might occur the other way round. It seems to me sufficient to break up the home completely, and, therefore, I should like to see the law follow the fact, and with habitual drunkenness for the same reason.

23,509. They are very much akin to each other amongst the lower classes?—Yes.

23,510. You have some comment to make on infidelity, too?—There, it seems to me, we do not nearly enough consider, not only the marriage in question, but the dreadful encouragement that the double standard has on general vice. If we make the double standard, it almost necessarily follows that other women are in some way degraded, either professional prostitutes, or other women who would perhaps otherwise lead a better life.

23,511. Your view would be, if equality was introduced, it would tend to raise the man's standard altogether?—Yes.

23,512. Instead of at present lowering women?—That is what I think, that it does lower the woman's standard and the man's as well. Most of us do not want to lower the standard or make divorce easy or common, but we think it would make it less common.

23,513. You have a point on the question of disease?—Yes. I think that is perhaps one of the most serious alterations that personally I wish to see made in the law. At present, as far as I understand it, both from advice and from a case which came under my notice, a wife cannot get divorce for the communication of disease: she can only get a judicial separation, and that only if the disease is the result of adultery and can be proved to be so.

23,514. It is not capable of being contracted, ordinarily speaking, in any other way?—Unless it was contracted before marriage, and then she has no remedy.

23,515. No, that is not so. I do not think so. The communication of disease knowingly would be the same?—That is the point, it is the "knowingly." Apparently now it constitutes cruelty if it was done knowingly, but in a case I knew of, we were told that strong and conclusive proof would be required that it was wilful, and no proof apparently was considered to be strong and conclusive enough. It is the fact that the law can hardly be fulfilled.

23,516. I am not sure whether the advice given you was correct. *Prima facie* the presumption is that if it is communicated it is communicated knowingly.

(Lord Guthrie.) Yes, the onus is the other way. You assume it.

23,517. (Chairman.) You assume it if there is no answer to it. We need not discuss the law. Your point is that in cases of that communication without any other proof there should be a ground of divorce?—Yes.

23,518. What would your position be, or do you intend to deal with it, in the case of disease acquired by one of the partners but not communicated?—It seems to me necessary to give it as a ground for a divorce, because the wife at least is so helpless.

23,519. At present it would be proof of adulterous intercourse, and that would be sufficient for you, if you make adultery alone a ground of divorce?—Yes, but in the case that I came intimately in contact with, it was a woman whose husband had apparently contracted it before marriage. Of course, it is very difficult for a woman to get advice, because there are no women lawyers, and a woman very often will not apply to a man lawyer. Also there are so few women doctors, and it is difficult for a woman; in fact it is very difficult for a woman to get at the truth at all.

23,520. This particular point is confined to the communication of disease?—Not only to the communication of disease; I should say to the proved presence of it, because it constitutes a danger.

23,521. The presence of it you need not trouble about, because *prima facie* it is almost conclusive proof that an adulterous intercourse has taken place, and in many cases it is capable of being proved as after marriage. We may pass on to the point of incurable madness?—There, again, it seems to me where the husband has to be removed to a lunatic asylum, or where it is certain that the madness will recur, it is to the advantage of the family that there should be a divorce possible. I have known a case where a husband at intervals went into the asylum and came out again and had children, and that seems to me, from the national point of view, a disastrous thing.

23,522. You suggest, further, that it should be a criminal offence to infect either partner with venereal disease?—It seems to me that might do something to raise the sense of responsibility. It is the sense of responsibility one wants to bring home, as public opinion so often follows the laws. People make their morals follow the general feeling of public opinion, and the general tone seems to me to be so extremely light-hearted and lax about an offence that seems the most terrible thing otherwise, and the most injurious to the relationship and the woman's own sense of dignity.

23,523. And terrible to the individual?—Yes. It is a curious thing; marriage and motherhood are supposed to be so much the largest part of a woman's life, and yet you can defile the one and imperil the other, and

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take away the whole object of her existence, and it is not considered criminal.

23,524. You agree it would only be a criminal offence where it was knowingly done?—Yes; but I would make that very stringent, because what you do not know you ought to know. In a great many cases of law you are presumed to know.

23,525. "Know" or "ought to know" are practically the same thing?—These things hardly ever happen accidentally. We are always being told they are accidents, but they do not happen if the people do not frequent the places where they do happen.

23,526. The next point is the question of the mode of trial?—It seems to me the way the law has been made has proved absolutely that it is impossible for one sex to see things entirely from the point of view of both sexes, and that the prevailing impression that women do not mind things and do not care about certain things, which seems to be very common in men's minds, arises from the fact that they cannot see the two points of view, such things as cruelty and what constitutes cruelty, and what a woman really minds. We are told a woman does not really mind, but that is simply because it is a man who speaks: he does not know what the woman minds.

23,527. We are told by some of the witnesses that it is easy to get a finding of cruelty in favour of the woman by the man who tries a case. I am not sure you may not; I do not say it is so. I am suggesting for your consideration whether you might not make it harder if you had half and half trying a case?—I think it is likely you might make it harder in some ways, but the women would think more about the children and the race.

23,528. You suggest in cases before the magistrates one magistrate should be a woman?—Yes.

23,529. Do you think that could be practically carried out?—It might take time, I think. Naturally you do not have magistrates until you train them to be magistrates, but you would find a good many women able and capable if trained.

23,530. The next point is one I should like to ask about. You say the laws of maintenance should be altered so as to give the wife a fixed proportion of her husband's earnings. Is that when a maintenance order is made, or during the time of marriage without any order between the parties?—I only mean she ought to be able to recover it.

23,531. After an order is made for maintenance?—I should like it to be possible for her to get an order without having to go into the workhouse, and as part of her right.

23,532. Do you mean by that paragraph to refer to what has been suggested to us, that every working man should hand over a portion of his wages to his wife by law, apart from any matrimonial dispute?—No.

23,533. You mean after a separation order?—No; I think she ought to be able to get it without having to be separated; she ought to be able to get it if she is not being adequately supported; she ought to be able to get an order without separating, without it being construed as an act of hostility.

23,534. While they are still living together?—Yes.

23,535. If she is not adequately maintained she should be able to apply for an order?—Yes. Very many men would then pull up and would be amicable.

23,536. We have had that suggestion made over and over again in a slightly different form, namely, that a woman should not have to leave her husband before she gets an order. What you mean is, if he is not maintaining her adequately she should be able to apply?—Yes.

23,537. Your last point is with regard to the laws of inheritance: I am not sure that comes within the scope of the Commission, but we may as well have on record what you say?—In view of the fact that marriage frequently has been a woman's only means of livelihood, she has perhaps brought up a family, and has lived, perhaps, to be middle-aged or elderly, and has nothing except what marriage has brought her, it seems to me a husband should not be able to leave her destitute. I know it is not often done, but I maintain that the idea that it can be done is derogatory to the whole married state.

23,538. No man should be able to absolutely disinherit his wife, or his children while under age?—As they do in France.

23,539. You will have Lord Guthrie with you in that; it is the Scotch system?—It is not only what may happen after death.

23,540. We find that law prevailing in many parts of the world; it is the same in France?—Yes.

23,541. (*Sir Frederick Treves.*) You have given five grounds for divorce. If I may take the one you have marked "d," do I understand you say that the existence of this disease *per se* constitutes a ground for divorce?—Yes.

23,542. Without proof?—Without proof.

23,543. Without proof of the particular manner in which it was communicated? I gathered that you said that the mere proof of the existence of this disease in either party should constitute a ground for divorce?—Yes.

23,544. You know that this malady might be, and commonly is, produced in perfectly innocent persons by perfectly innocent means?—I know it can exist. I did not know it was very common.

23,545. Well, perhaps not very common. So that if it were a ground for divorce without further proof it would be very unjust, or might be?—I am not thinking so much of the justice as of the effects.

23,546. The point is this: you claim that the demonstration that this disease exists in one or other of the parties is a ground for divorce?—Yes, because I think it is injurious to the marriage state.

23,547. You do not consider how it may have been acquired?—No, I think it would be better not.

23,548. Supposing it has been acquired in an innocent manner, it is a little hard?—Yes.

23,549. But still, that is quite a new feature. You would assert that this disease is an absolute ground for divorce, no matter how it has been acquired?—Just like lunacy.

23,550. Nothing to do with immorality?—No, exactly; that is what I mean.

23,551. Absolutely apart from immorality?—Quite.

23,552. I think I am right in saying in no country in Europe does that constitute a ground for divorce—I believe not?—I do not know.

23,553. That is a new position altogether. With regard to recurring madness, I suppose you would not mind that term not being used, but the word "incurable" madness being used. From your point of view it is the same thing?—Yes, it is akin. You mean it is difficult to determine when it is incurable?

23,554. There are forms of recurring madness which you probably would not say were grounds of divorce; there are forms of recurring insanity which are not incurable. You would not urge that an individual who is liable to that very wide trouble known as recurring insanity should be divorced on that ground alone?—If it means that he or she is constantly separated for long periods. It need not be compulsory, I should like to make it possible.

23,555. The individual might recover perfectly from it. There are forms of insanity which would be termed "recurring" from which a perfect recovery might be made. Would it not be hard if divorce could be laid on that one ground?—I think there would be individual cases where it would be hard, but I do not regard divorce as a punishment, but simply the effect it has on the married life and the future of the race.

23,556. So that if the individual were insane, the form of recurring insanity, even with a statement he or she may recover, you would say was a ground for divorce?—Unless it could be said the person would completely recover, which I imagine would be difficult to say.

23,557. It comes to the same point, you would use the word "incurable"?—Yes.

23,558. Then the word "recurring" you would drop?—I mean what you would call "incurable."

23,559. As a matter of interest, with regard to women forming half the jury in a divorce case, do you think women would be found who would fulfil that office?—Not immediately, naturally.

23,560. Do you think women could be compelled to fulfil that office?—I see no reason why not.

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23,561. Because if it ever be a matter of law that women must sit on the jury, it must be a matter of compulsion?—Yes.

23,562. You see no difficulty in that?—I see no difficulty.

23,563. Surely there are women who under no circumstances on this earth would sit on such a jury? Do you doubt it?—You imagine we should have a large number of passive resisters?

23,564. It would have to be compulsory, that any woman should be compelled to sit on the jury?—They find it possible in other countries.

23,565. You think in England it would be possible?—I cannot see why England should differ from the Scandinavian countries, where women sit on some juries. In Norway, for instance, I believe they do.

23,566. (*Sir William Anson.*) I should like to ask you how far the difficulties which you have stated could be remedied by legislation. First, as to jurisdiction. If divorce was brought within the reach of the poor, that is to say, if either by extension of jurisdiction or cheapening of procedure, divorce under present conditions was as accessible to the poor as to the rich, that would meet your difficulty?—Yes.

23,567. As regards separation orders, the injustice to a wife, if she is separated from her husband and he seduces another woman, would be met if the sexes were made equal as to the grounds of divorce?—Yes.

23,568. If adultery in the man was a ground of divorce without cruelty or desertion?—Quite so.

23,569. If that were so, do you think it would assist the standard of morality amongst the working classes?—Yes, because I think it is very inadvisable to have a great many things that are very commonly done, and that are not admitted or acknowledged. I think we ought to try and make our law agree rather more with actual practice.

23,570. As to the cases in which marriage is a woman's only means of livelihood, it is the tendency of administration to debar married women from various forms of employment?—Yes, increasingly.

23,571. That is with the idea that the business of a married woman is to make the home?—Quite so.

23,572. Do you not think that is right?—Certainly.

23,573. Do you think that the tendency of the girls in that class of life is towards or contrary to the endeavour to make the home a comfortable one?—I think the modern tendency is for the girls to prefer to go out to earn, because of the enormously increased desire on the part of women to be independent, and that is why I should like to see the law altered so as to make the married woman more independent, because then I think she would stay in the home. We are now trying to keep the women in the home. At the same time we are tightening up the dependence on the husband, and I think he is not fit for it.

23,574. You think girls take trouble in the earlier stages of their life to learn the sort of things that tend to make a home comfortable, what is called in their education housecraft?—No, indeed, and I think very little is done to help them.

23,575. It is not done in the right way?—Very little is done to help them. They cannot learn. For another thing, the girls in the north are fond of the life and gaiety of a factory, and to shut them up in little homes, where they are entirely solitary and have not, as they say, any money in their hands is a thing they resent.

23,576. The gaiety of single life is more attractive?—Than when they are married.

23,577. More attractive than a serious aspect of married life?—I think it is natural when married, if they have not a penny of their own, and they have been used to earn, that they feel it injures their pride and self-respect. They do not like to go to a man to ask him for everything.

23,578. When you say they have no opportunity of learning, there is a way of teaching them in schools of cookery and housecraft?—I do not think it is well adapted to the needs of the working people from what I have seen. They teach them to cook on gas-stoves they have not got. I do not think the teaching is adapted to the working-class people. I think the whole

difficulty is that we are trying to keep women in the home and making the home intolerable. If you want to keep women in the home you must give them independence.

23,579. The first business of the woman is to make the home tolerable; it cannot be tolerable if she chooses to make it otherwise?—That is so. I should like to help them.

23,580. With regard to publication, the injury done by it is more because it appeals to the tendency of young people than that it insults women, because women need not read them?—No, but the lads do.

23,581. It is bad for the lads?—It is very bad for the lads.

23,582. Girls read them, too?—Yes, the girls and the lads all read them. They buy them on purpose to read them.

23,583. As regards amendments in the law, you suggest various grounds for divorce, and amongst them there is persistent cruelty. Have you any idea of how that could be defined?—I know it is common to say nothing that does not injure the health is cruel.

23,584. I asked a witness some time ago, and he gave as an instance of what he called persistent cruelty, a husband who spat at the woman whenever she spoke to him?—Certainly, I should call that persistent cruelty.

23,585. As a ground of divorce?—It is not likely to be the only thing, is it?

23,586. No; but I notice one of your reasons for wishing women to serve on juries, was that you would leave it to the jury to say what was cruelty or not, and women might not know what other women regard as cruelty. One woman may not take the same view of cruelty as another, so that you might get a different variety of cruelty from such juries?—I think you would.

23,587. It would be rather disastrous if it was a perfectly uncertain question whether a jury would find in favour of divorce or not?—Do you find the uniformity among the decisions of the magistrates is remarkable now? I thought all over the country their decisions were different.

23,588. There may be a lack of uniformity, but that is not so serious a matter as divorce. You are proposing persistent cruelty should be a ground of divorce, and that what is "persistent cruelty" should be determined by a jury partly composed of women?—Yes.

23,589. You think that would tend to uniformity of decision?—Quite as much as the present system.

23,590. Under the present system cruelty is not a ground of divorce. Divorce can only be given by the High Court?—You say divorce is a serious question: surely it is just as serious that a woman should have to live the whole of her life in an intolerable position and what she feels to be cruelty. That seems to break the marriage relation in any sense in which it is worth anything, and therefore I think the law had better follow it. Marriage ought to be based on consent.

23,591. Cases of hardship would be the ground for altering the conditions of marriage?—I think where it has broken down, in fact you had better break it down by law.

23,592. You admit there might be difficulty in defining "persistent cruelty" under your system of adjudication?—There is always difficulty; there is now, and would be then.

23,593. The same with habitual drunkenness?—Yes. That would be easier, because you could have a certain number of convictions.

23,594. Infidelity you have dealt with. You would make it the same for both sexes?—Yes.

23,595. As to the laws of maintenance being altered I understand you would make a sort of statutory marriage settlement for every woman, that she should be entitled to a portion of her husband's earnings?—Not exactly, because I think an immense number of women would not bother about it, but I would like to make it possible. I do not want it to be handed over always in all cases.

23,596. When you say the laws of maintenance should be altered so as to give the wife a fixed proportion of her husband's earnings, that has been suggested with some force as a way of making young people look more seriously upon marriage?—I think it would.

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23,597. If they knew as a matter of law that the husband would have to give part of his earnings to his wife?—I think it would.

23,598. You could hardly do that except by statute?—No.

23,599. It would amount to a statute?—It would often be a dead letter, mostly.

23,600. (*Lady Frances Balfour.*) It has been suggested that a man is doing a fairly light thing in always addressing his wife by spitting at her. Does not that imply the state of degradation in which that woman is living with that man?—That is what I meant when I said he would be doing other things besides.

23,601. Is it compatible with the man having promised to love and cherish, and generally look after her? Do you think it is a light thing that a man should be spitting at his wife?—I do not, indeed. I think it reveals the position.

(*Sir William Anson.*) I did not suggest that it was. I was giving it as a definition of cruelty.

23,602. (*Lady Frances Balfour.*) Is it not a definition of one of the most horrible forms of cruelty?—To me it seems so.

23,603. When you hear that mentioned as a thing which might or might not be cruelty, do you not feel with what ease women who are worthy citizens would be willing to serve on a jury, and to put a woman's point of view in such a case as that?—I think a great many women would be eager to.

23,604. Any woman who is a citizen and cares for her position in society, and for other women as citizens, you feel would be willing to serve and put a woman's point of view to the rest of the jury?—I agree that women who had any public spirit would.

23,605. In divorce cases is it not true where a man and woman are concerned that both sides have to be represented?—That is what I think.

23,606. Your experience of the working classes is chiefly in Manchester and around it?—Yes.

23,607. You said, I rather surprised me, that you thought they would regard civil marriage more highly than they do the religious service?—Yes; it surprised me very much.

23,608. They have expressed that to you?—You must remember they do not put it like that, but it crops up in their habit of thinking. They seem to regard the church as something remote from life. They think it wrong to break any promise in church, that it is wicked. But the law has a peculiar sanction of another sort, and I think, curiously enough, they care more about breaking the actual law than the moral and religious law.

23,609. Is that peculiar to women in your part of the country? It is against much of the evidence we have had, that they attach a very high opinion to the marriage tie?—An immense number of working women do not go to church at all in the factory districts.

23,610. Except for that ceremony?—It is not their habit to go to church much, but, of course, there are different classes. I am not speaking of the middle class, but of the operative class.

23,611. They attach great importance to their marriage lines?—Enormous.

23,612. And they have a high opinion of the marriage estate?—I should say, on the whole, except a section that is almost promiscuous.

23,613. Is it a high opinion of the estate into which they enter religiously, or have they an underlying view as regards the civil relation?—The women have the view that it is the only thing which will give women dignity and position.

23,614. By the law?—Yes.

23,615. We have been talking about legislation, and the phrase is familiar to you and to me that certain things are legislated because it is good for women?—Yes.

23,616. But you feel that if legislation is to be employed against married women, that they should have some voice in it before that legislation passes?—Of course, we all think that.

23,617. That is a thing which Mr. Burns has spoken about a great deal. On more than one occasion he has said that married women should not be allowed to work at any employment for a year. You think that has

been said without any consultation as to their views?—Yes.

23,618. You also suggest that if a woman is deprived of her industrial life there are resources to her which are not left open to the unemployed man, which are a danger to her and the State?—Yes.

23,619. And which legislation does not recognise?—No, and it puts a great strain on the woman.

23,620. You have indicated to-day that where possible stipendiary magistrates might be strengthened by having women amongst their number. Do you feel that women would be capable of taking that position?—I think duly trained women would.

23,621. You only suggest it for cases where women and children are concerned?—Yes.

23,622. (*Mrs. Tennant.*) Do you feel that the section in the Factory Act which concerns childbirth is against the interests of married women?—I think, just as it stands, it is not quite fair. It simply prevents them from working and does not give them any provision. I should like to see some system of maternal insurance. I agree with women being protected most emphatically, but I do not regard the law as protecting them adequately, because it does not give that maintenance.

23,623. It stops short?—Yes.

23,624. You do not consider it is a bad provision in itself that a woman should not be allowed to return to work within four weeks of childbirth?—I should like to see it prolonged. I do not think the women themselves would resent it if they had the means in their hands.

23,625. You do not find many women who wish to return to work before?—I do not find that they wish to, but I find that they evade the law out of necessity. They will go to another mill where they are not known, or it will not be known when the child was born. They will return before the time, and nobody supposes that they do it because they enjoy it, but because they must.

23,626. You are familiar with the terms of the section?—Yes.

23,627. Both in the interest of the mother and of the child you consider it desirable that the woman should not return to work soon after a child has been born?—Certainly.

23,628. When you say that marriage is the only means of livelihood, you are not thinking of the working women in Lancashire?—A great many of them.

23,629. A great many women in Lancashire continue their work after marriage?—Yes. I meant that more and more administration was making it difficult for women to get work after they were married.

23,630. Have you any idea of the number of cases that are taken under that section 61 of the Factory Act, and how difficult it is to enforce it owing to its terms?—No.

23,631. The employer must knowingly allow the woman to be employed within a month after the birth of the child?—That is the trouble. That is always the question where the word "knowingly" comes in.

23,632. That section is operative in a very few cases indeed?—Yes.

23,633. It cannot be said to be a large influence against the employment of married women?—No. When I said it was their only employment, I was thinking very often that if they had been several years out of the particular employment they were engaged on when maidens, it becomes very difficult to return. The very fact of marriage makes them very helpless, or they have to live where their husband's work is, and where there is no work for women, perhaps.

23,634. As a rule, in Lancashire, you agree that a married woman does work?—She is better off in Lancashire than in most places.

23,635. Do you think it is better that she should work?—Under the present conditions. I speak as I should feel myself. If I were a woman of that class I should want to have my own money.

23,636. Even if your husband were earning enough money to keep you?—If he was an ideal husband and gave me adequate money to keep the home I might; but I well understand the desire for economic independence.

23,637. It carries with it drudgery in practice. The woman cannot spend all her days in a factory and what is left of her evenings working at her home without

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being a drudge?—I find in the cotton places, for instance Glossop, the married woman who works in the mill is a magnificent specimen, and her children and her home are splendid, better than the colliers' homes in other parts of the country, or the iron-puddlers', where the women cannot get work. They are more slovenly and do not attend to their homes, and the children are not attended to constantly where the woman cannot go out to work.

23,638. Think of the day the woman must spend. The ordinary starting hours are 6 o'clock in the morning, and if she does not live at the mill gate, she has to go some distance. Then if she leaves off at 6 o'clock in the evening she has to go the same distance to get home, so that little time is left for leisure, even for health if she is going to attend to her home when she returns at half-past 6 or 7?—They often make arrangements for that, those who are getting good pay.

23,639. Then she is not looking after the home or the children. It is deputed to somebody else, and she pays out much of what she brings in?—The children are often out of the home a large portion of the time.

23,640. If they are young children it is not an ideal state that they should be in somebody else's home or in a crèche?—You misunderstand me. I never said it was an ideal condition, but under the present arrangements, where the woman is so helpless, I think she naturally clings to her independence. I am not arguing that it would not be better that mothers should stay in their home with their children: I think it would be better.

23,641. You feel her independence would be secured by security of maintenance from the husband?—Yes.

23,642. That would satisfy your demand?—I should not like to see the law absolutely enforce her staying within the four walls of the home. I think that should be left to the maternal instinct.

23,643. I think you said you would like the present four weeks extended so that the mother should not go back to work?—Yes.

23,644. What period would you like it extended to?—I think it would be very advisable if it could have been extended to two or three or four months. It is different in different classes. A woman can be a school teacher perfectly well and yet have her young child with her as much as is required, if she wishes to.

23,645. A very young child?—After all, in the rich classes you habitually have it. Why should not school teachers be allowed to do so when in the richer classes the mother who has a month-old child attends to the child when it requires to be fed and goes off and leaves it to her nurse?

23,646. Possibly it is desirable that the mother should attend more to her child among the richer classes?—Possibly, but you are not proposing legislation for the richer classes, are you? It is the interference of the law.

23,647. As a matter of fact, the mother in the richer classes can arrange her engagements as she pleases?—That is absolute, of course.

23,648. In what connection are you associated with the working women in Lancashire?—I have no official connection at all.

23,649. How do you come in touch with them?—I come in touch a great deal at meetings and at gatherings of working women. I have had a great many conversations with them in the course of my work. I have gone about among them a great deal. In the old days, when I lived in Manchester, I was connected with a girls' club, and used to visit the parents of girls a great deal.

23,650. Have you worked at all in connection with trade unions?—No, I have no connection with them.

23,651. (*Lord Guthrie*.) Do you think the standard in regard to this whole matter wants raising, both among men and among women?—Yes, I think there is plenty of room for improvement.

23,652. Both in making them think more seriously about getting married and in bringing about such a state of matters as would render divorce unnecessary?—Quite so.

23,653. Do you think that the desire in certain cases to be enabled to obtain divorce necessarily implies any low moral tone on the part of the person so desiring?

—No. I think it is very natural you should wish to be free from a bond that is no longer what you hoped it would be.

23,654. In the person's own interest, and also in the interests of the children, who are being deteriorated by the other partner?—Quite so. I regard that as most important.

23,655. Is it the fact that women are in this country content to endure, and are expected to endure, treatment on the part of the husband in the way of infidelity, in the way of cruelty, in the way of drunkenness, that neither in their own interest nor in the interest of their children they should endure?—I think so. It is degrading to them to be patient with certain things.

23,656. You think there is in this country a false idea that a woman ought to endure many things that no self-respecting woman should be expected to endure?—I think so, certainly. It implies a very low standard of what marriage ought to be, I think.

23,657. Suppose divorce for proper causes were open to the poor, which we are told it is not in England, would you expect that to result in a large number of divorces or not being applied for?—I do not think so, but it is difficult to form a view. I see very little desire on the part of women, very little indeed.

23,658. Do you think from your experience that women would rush with a small matter to the divorce court, or would they endure a great deal before they thought of such a remedy?—The fault I find with women is that they are too patient generally.

23,659. Would you expect that if divorce were open to the poor it would be availed of more in the town or in the country? What is your experience?—I should think in the town, because they hear so much more.

23,660. For which of the additional causes which you have indicated?—Would cruelty be the largest number?—Among working people, cruelty.

23,661. Cruelty and habitual drunkenness?—In our class I should say not.

23,662. But among the working people, skilled and unskilled?—I should think so.

23,663. You do not especially mention desertion in your proof?—That was an oversight.

23,664. If the desertion is wilful and has lasted a sufficient period to show that it is permanent?—Exactly.

23,665. That would cover a good many cases?—It seems to me it would cover a very great many.

23,666. Suppose, as has been suggested, that instead of divorce being open to the poor and additional causes being allowed, it should be abolished altogether, do you think that would have a good moral effect?—I think it would have a very bad effect, because human nature being as it is, people would do without marriage largely. I think the more thoughtful of them would hesitate before they entered upon it, and the less thoughtful would enter upon it and then live promiscuously.

23,667. The knowledge if it becomes from moral fault unendurable does not tend to deteriorate morality: you think it improves it?—I do not follow you.

23,668. The knowledge if it becomes unendurable from moral fault it can be terminated does not tend to retard immorality, but rather to favour it?—I think the tie would favour immorality. People often do things recklessly if there is no consequence, but it would diminish the "slips" if they knew they might be followed by divorce.

23,669. The result of divorce is a very serious thing for a woman, and contains within it many deterrents: she loses her social position, her children, and her means of maintenance. Do you think that those are important deterrents preventing a woman—take the case of a woman first—from lapsing?—I think that would be all the stronger with a woman. A woman stands to lose so much.

23,670. Would you object to any deterrent being introduced? It has been proposed that the guilty spouse when divorced should not be allowed to marry the paramour, and in that way the motive of getting clear of one marriage and entering into another and making things right would be taken away?—I see that point, but I think it would be a terrible thing to say.

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23,671. It is not preventing re-marriage of somebody else?—No.

23,672. But preventing the two guilty people from marriage. That has been proposed?—That seems to me very horrible, because it divorces any real affection that there may be, or any possibility of legal connection.

23,673. You think that they would live together without marriage and have illegitimate children, and that the moral effect would be worse?—Yes; and I think if a man has misconducted himself with another woman, and they love each other, the best remedy is for them to live together.

23,674. That is one view, and one appreciates that; but on the other hand, if you enacted the law I have suggested, it would take away what undoubtedly is the motive?—I see that point.

23,675. It is a difficult question?—It is very difficult question.

23,676. What amount do you think it might be reasonably expected a working man would be able to pay in order to obtain a divorce? He cannot get it now. What kind of amount—10*l.*, or something like that? He would have to save, of course?—He would have to save.

23,677. That would not be unreasonable?—It seems to me little enough, but when you hear that he cannot afford to have a doctor to his wife it is a very large amount.

23,678. In the other view, what is spent on drink and sport, it does not seem very large?—No, but the woman very often could not collect 10*l.*

23,679. In the case of the woman, if a system were provided under which she could obtain legal help for nothing, and be able to commence her action for nothing, and the court could compel the husband to provide sufficient to go on with the action, that would meet the situation?—Providing he were guilty, I suppose?

23,680. No; if she makes a *prima facie* case, that would meet the situation?—Yes.

23,681. You referred to women having a right to be concerned in the administration of separation or of divorce?—Yes.

23,682. I suppose the same reasons that have induced the legislature to authorise women to take part in Poor Law administration and educational administration would point, in your view, to their being concerned in this matter?—I should say they were where children were concerned, and where other women were concerned, that the woman's point of view should be taken in conjunction with the man's.

23,683. Your view would apply, of course, to children's courts, for instance?—Yes.

23,684. For the same reason?—Yes.

23,684a. (*Sir William Anson.*) I am anxious to put myself right on the subject of cruelty. Cruelty has been defined as conduct which is dangerous to life or health?—Yes.

23,685. It has also been defined as you would define it, having in view the case I mentioned, as conduct which makes married life intolerable?—Yes.

23,686. If the matter was submitted, as you would submit it, to a jury composed of men and women, what made life intolerable might be different in the view of one jury and another?—Yes.

23,687. So that you might so define cruelty as to enable any jury to say of any marriage that it was a failure and that there was ground of divorce?—Of course, you have always to presuppose a certain amount of common sense in a jury.

23,688. We look for it. I wish to make clear the point in question. I do not wish to under-rate the enormity of the conduct of the husband which has been described, but only to point to a difficulty from any definition of cruelty. You will admit it does exist?—I admit the difficulty does exist.

23,689. And it might lead to a general relaxation of the marriage tie?—Not so dangerous as the present.

23,690. Not so dangerous as the present severity?—No, not so dangerous.

23,691. (*Sir Lewis Dibdin.*) When you suggest women jurymen and speak about the appreciation of the woman's point of view, you are thinking really of

their understanding motives better than men, in particular courses of action, and the influences which bear upon women, particularly with regard to children?—Yes, that amongst other things.

23,692. That is a point of view which it is reasonable to suppose that women jurymen would understand better than men?—They would be likely to see it, would they not?

23,693. Your suggestion is a novel one: I mean it is an unfamiliar one, but does it in substance go further than the new law with regard to probation officers? Women are very often probation officers?—I believe they can be probation officers.

23,694. My experience is that they are very often?—Yes.

23,695. Have you had experience in the working of the First Offenders' Act, the recent Act as to the working of female probation officers?—I have only common knowledge.

23,696. Is not that common knowledge directed to this, that they are a valuable help to the administration of justice?—So I should understand, and expect.

23,697. That is my experience. One difficulty I feel about that, your suggestion is a reference to divorce amongst other things, principally?—Yes.

23,698. You know, I have no doubt, that the vast majority of divorce cases are not tried before juries at all?—No.

23,699. They are tried by the judge alone, so that putting women on the jury would not affect the great majority of divorce cases. Have you any remedy for that?—I should be thought very extreme, but I should like to see women judges, too.

23,700. I was thinking whether that would not be your view?—Yes, it is.

23,701. You think there ought to be women judges. I gather you think there ought to be women lawyers, and that there is no reason why there should not be women judges?—I think it is absolutely essential for the proper conduct of affairs that there should be.

23,702. You mean the affairs of women and children?—Yes. Women will not speak to men about things. We are told they do not complain; and that they do not mind. They said they did not complain before there were women factory inspectors.

23,703. Some women—forgive me giving my experience—are quite communicative to men?—No doubt.

23,704. I quite see your point of view, that there are many women who prefer to confide their difficulties and troubles to women?—Yes.

23,705. When I was a young man there were two women conveyancers in Lincoln's Inn, but I am afraid that they have died out. Those lawyers, if there were women lawyers, would be in training for judges, and then you think there is no reason why there should not be women judges?—I see no reason at all.

23,706. Would you give those judges exclusively jurisdiction for women's cases, or treat them like other judges, put them to do the affairs of the Law Courts, but take good care that if a woman's case came on it should come before them?—It is looking very far ahead; anyhow for a time it would be women's and children's cases.

23,707. You would confine them to that?—I should confine them to what they had particularly practised for.

23,708. Your view is that a separation order should not be made permanent?—Yes.

23,709. But if a separation order has been in operation for, say, two years, and the people do not wish to come together again, that should mature into a divorce?—Yes.

23,710. Your view of that would not be confined to cases where there has been a separation order. If the people separated in any way and had gone on in a state of separation for whatever was considered a sufficient interval, and then did not want to come together, they ought to have a divorce?—That would amount to desertion, I suppose.

23,711. I suppose it would, but I am taking people who separate perhaps under agreement, or find they cannot hit it off and separate, and that goes on until it has become clear that they never will come together

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again. You think then there ought to be a divorce?—Yes.

23,712. At the bottom of your view there would be divorce by mutual consent?—Yes, it would amount to that.

23,713. Lord Guthrie asked you whether there would be many cases, and you said, particularly with poor women, they have no desire for divorce. There is no claim for greater facilities?—It does not come into their lives.

23,714. It is so entirely out of their reach?—There is a great deal of that sort of philosophy among them.

23,715. Your view was that women were much too patient, enduring more than they ought to really. I have no doubt that is so in a great number of cases. Have you not come across many cases where women have, after a little quarrel or tiff, run off to the magistrates for a separation order?—Yes.

23,716. They are very common. Anybody who has any experience of magistrates' courts knows that that thing happens continually?—Yes, especially the young ones.

23,717. Do you not think that there would be some danger of the same thing occurring were divorce brought more easily within the reach of that class?—I think where separation orders were granted in that way it would be a good thing to have something like probation officers there, too, to have women to advise women and look into the matter. I think it might work very well indeed.

23,718. With a view to reconciliation. You said separation, but you meant divorce?—Yes.

23,719. Have you had experience of the work that is already done in that way to a certain extent by the magistrates themselves, but to a far larger extent by the police court missionaries?—My experience is that they almost invariably advise the women to endure everything. I have had women who have every cause, even for a divorce, and certainly for separation, and they have gone to get advice. There is a woman whom I know intimately who ran off to the clergyman for advice, and his advice to her was that she should go back and endure the most fearful indignities.

23,720. I was not speaking of clergymen, but of people who are in immediate contact, particularly the police court missionaries. I am sure that you must have come across their action often enough. Do you think that they are prejudiced in favour of the husbands?—I should not say that.

23,721. We had a police court missionary who said he would like to shoot the husbands?—Many are sympathetic, but they realise how helpless the woman would be, and they drive them back to their husbands.

23,722. You think their work is in the direction you desire, of bringing friendly counsel to bear upon the women?—I often wish the friendly counsel could extend to the men. I think very often women are sent back to their husbands and the men are not tackled. I think if the man could be talked to it would do him some good.

23,723. Would you make adultery or misconduct of that kind a cause for a separation order? It is not now, as you know. It can be a cause of stopping the wife's allowance, but not a cause for granting a separation order. Would you make that a ground on which a separation order could be granted?

(Chairman.) You mean by the magistrates?

23,724. (Sir Lewis Dibdin.) A separation order by the magistrates I am speaking of?—For the wife to get a separation?

23,725. Or the husband, either side?—Certainly.

23,726. You know it is not so now?—I thought the husband could get it. He can get a divorce.

23,727. I am not speaking of divorce: I am speaking of separation orders before the magistrates. The husband can get the allowance to the wife stopped after an order has been made, if it is shown that she has misconducted herself. I am asking whether, in your view, adultery, misconduct of that kind, ought to be made a ground for the granting of a separation order on either side?—Certainly, I think so.

23,728. You do not think that would confuse the jurisdiction of the magistrates, which now is only a

protective jurisdiction, with matrimonial jurisdiction pure and simple, such as divorce and separation?—I should think the balance of good would be in favour of allowing it.

23,729. (Judge Tindal Atkinson.) You know Manchester well?—Very well.

23,730. We have had evidence from Sheffield that the denial of divorce leads people to take the law into their own hands and form irregular unions. Is that your experience in Manchester?—Certainly.

23,731. The same experience?—Yes; it is very common.

23,732. Do you consider that the denial of divorce leads to compulsory condonation of adultery, and the parties are obliged to live together, although one has committed adultery, or do live together because they cannot get relief?—I think they do live together, and I think it tends to very great lowering of the standard.

23,733. So that they have to condone the offence by continuing to live together, and you think that is a serious evil?—A very serious evil.

23,734. Whatever court may be given to the poor, must it be readily and easily accessible?—I should have thought so.

23,735. With regard to the apportionment of the wages, in my experience of the administration of the law as regards committal summonses, I find that in the greater number of cases the husbands do give a very large portion of their wages to their wives. I want to suggest one difficulty about this question, that in many cases also the wife spends the money either in drink or in some irregular way, and runs up bills against the husband for the necessities of his house, and he is landed in debt, perhaps 3*l.* or 4*l.* If you compelled the husband to give his wife so much, then many husbands might be placed in that position?—I think it is very likely.

23,736. And therefore it is better to leave it to the discretion of the husband?—I do not think I would agree to that following on; undoubtedly, I think the bad wife might. I am not sure the power to run up bills, to pledge the husband's credit, is a very good power. I am not clear upon that being a just or equitable arrangement.

23,737. (Mr. Brierley.) Do you suggest there should be a legal obligation on the part of the husband to pay a certain definite proportion of his wages to his wife?—I think she ought to be able to recover it.

23,738. As a debt, or by an order?—By an order, to be made, if necessary, on the employer.

23,739. While she was living with him?—Yes, if she can prove that he has not supplied her with necessities.

23,740. I can understand if she can prove he has neglected to maintain her. I understand she should be able to come for an order, but apart from that you would hardly suggest that she should have the legal right of coming upon him?—No.

23,741. It would hardly conduce to peace in the home, would it?—If it is only employment, one feels she should have some definite legal right to wages for that employment. With a woman it is her employment, and it prevents her pursuing another employment.

23,742. I understand you are not in favour of interfering with the present jurisdiction of magistrates in the matter of separation orders, are you?—I think not.

23,743. You leave them as they are. You have pointed out the unfortunate position in which a woman who is separated is. In the case of women who have been brought up to skilled trades the mere disuse for a term of years renders it more difficult to get employment?—Much more, and she has often followed her husband to places of his employment where hers does not exist.

23,744. That is a misfortune which happens apart from any administrative action. That must follow?—Yes.

23,745. I understand you to suggest on that ground it is desirable that she should have facilities at any rate for exercising her right to divorce?—Yes, in order that she may have some chance of making a new home.

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23,746. The only advantage she would get from divorce as distinguished from separation would be the chance of subsequent marriage?—Yes.

23,747. Against that you would have to place the fact that she would lose the chance of being reconciled to her former husband?—But it would be permissive, not compulsory.

23,748. It might be more wise of her to rely upon her right to a separation order than her right to a divorce?—That would be left to her.

23,749. You would not interfere with the separation order?—No.

23,750. With regard to civil marriages, as a matter of fact in Manchester there are a good many civil marriages?—Yes.

23,751. Have you found that the duties of matrimony are in any way better observed in the cases of marriage at the registry office than in cases of marriage in church?—I have not any statistics.

23,752. Your impression is that they seem to think more of civil marriages. I must confess that there are a good many civil marriages that seem to result rather badly?—I think that was gathered more as a general impression from the way they talk of it. I have no statistics or figures to give of proportions.

23,753. I find it difficult to see how it can be understood to be more binding to go to the registry office rather than to go to Manchester Cathedral, which, as you know, is the favourite place in Manchester?—They think it a more formidable thing. They wander into a church; they have been there before, or know about it.

23,754. Have you been at a marriage at the registrar's office?—Yes.

23,755. They do not seem especially impressive?—It is not impressive, but it has a binding effect, it is difficult to say what.

23,756. I was wondering whether you had noticed any apparently more binding force?—Of course, the religious ceremony could and would very frequently follow, I think, as it does in France.

23,757. I understood you, rather to mean you thought the working class really attached a more binding force to the civil ceremony than to the religious?—That is the impression they have given me. They regard the church as ideal, and we none of us live up to our ideals, whereas the other is a practical contract.

23,758. The relationship of husband and wife results from either?—They regard the church as dealing with ideals we notoriously none of us live up to. That is the tone they take, a great many of them.

23,759. (*Chairman.*) Whether the ceremony should be civil or religious, would your view be that something more should be done to take care that the consent of the parents of young people is obtained, and that it is brought home to them that they are entering upon a very serious obligation?—I should

like young people to realise the greater seriousness of it.

23,760. At present there is nothing?—No.

23,761. The publication of banns is not very effective?—No.

23,762. You would like something done to bring the matter more home to the people?—I would, indeed. I doubt whether the parents can do it.

23,763. Do you consider improvident marriages largely responsible for the trouble?—A great deal—the thoughtlessness of it, generally.

23,764. I am not sure whether I appreciate rightly if you think the magistrates as distinguished from the Divorce Court should have the power of dealing with separation on the ground of adultery. Magistrates have not that power at present, but the High Court has. Do you wish to convey that should be allotted to the magistrates as well as the cruelty cases, or reserved for such a tribunal as might be within the reach of the poor in the district, and conducted by a higher court?—I do not think I am competent to give an opinion upon that.

23,765. One other point on the interesting suggestion of lady jurors or judges. You are aware that a very large proportion of cases, probably much the greater number, are tried by the judge alone?—Yes.

23,766. Does your view involve in every case of that kind there should be a man and a woman judge, and the tribunal doubled for the purpose?—It sounds rather difficult to work.

23,767. I want to get to practical questions. You see the difficulty?—I see the difficulty. I also see it would have certain advantages, but I think the difficulty would be tremendous.

23,768. Would your view be assisted by the suggestion of an assessor where it was desired to have advice?—I think that would be an advantage; you mean someone who would be adviser and advocate?

23,769. Adviser on any matter of which the judge desires information in connection with the subject?

(*Sir Lewis Diddin.*) The court.

23,770. (*Chairman.*) Yes, the court?—It is too technical a question for me.

23,771. There were two capacities in my judicial work: one is where the judge sits alone, another is the Admiralty judge, where he has two nautical assessors. Would your view be that in the other branch there should be a lady assessor wherever required? It would be required in every case, because it is always a matter between a man and a woman. I want to see how far you would carry it?—It seems to me it is possible to do that.

23,772. You feel there is a difficulty?—My technical knowledge is not sufficient. I do not know how it would work out.

(*Chairman.*) We thank you very much indeed for your evidence; I am sure it has been of great assistance to us.

Professor JOHN DAVISON LAWSON called and examined.

23,773. (*Chairman.*) Your home is in St. Louis, United States?—Yes, Missouri.

23,774. Except for a short time on the bench in the inferior courts, you have been a member of the State and Federal Bars for over 30 years, and have been President of the Bar Association of your State, Missouri?—Yes.

23,775. For the past 15 years you have held the office of Dean of the Law School of the State. You have had a practice in divorce cases during those 15 years, but as the author of a number of law treatises and the editor of the "American Law Review," the oldest legal periodical in the United States, you have studied and discussed the divorce laws of the United States?—Yes.

23,776. I am not sure how your name was brought before the Commission, but we seem to have caught you on a visit to this country?—I am here, as I say in my statement, with a special commission from the American Institute of Criminal Law and Criminology, the American Bar Association, and United States

Government, to study the administration of the criminal law in England, for the purpose of reporting to the Government and to the National Associations, in order that we in America may, if possible, reform our criminal procedure, and get rid of the interminable delay and uncertainty in the administration of our criminal law, which is one of the great complaints to-day throughout the United States.

23,777. Can you tell us how your name was brought to the attention of the Commission?—I had letters of introduction from the American Ambassador to members of the Bar and Judges in London. I was introduced to the Secretary of this Commission at lunch at the Inner Temple a week or two ago.

23,778. Being over here representing the American Bar Association and the American Society of Criminal Law and Criminology, you have been kind enough to prepare a proof of what you would like to say?—Yes.

23,779. You say you do not wish to burden your proof with statistics because we already have the official report?—Yes.

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23,780. You give your personal experience during your 30 years professional life as practising lawyer, judge, law writer and teacher, and legal editor?—Yes.

23,781. I have your proof before me, and I should like to take you through that. You say: Next to our archaic criminal procedure, the question of divorce is receiving at present much attention from the public and the public men of the United States. A movement to bring about uniformity in the marriage and divorce laws of the different States was begun in 1906, at a conference of delegates appointed by the Governors of the different States, at the suggestion of the President Roosevelt. The subject was again discussed very fully at a conference of which I was a member, called by the National Civic Federation at Washington, in January of this year, the object of the conference being to bring about uniformity as far as possible in the laws of the different States on various subjects. I do not think we have heard of the January conference?—No. That was a supplementary conference called by President Taft, and its proceedings have not yet been published. I was a delegate to that conference from Missouri, but I left America for Italy before it met in January.

23,782. Marriage and divorce fell within the scope of that conference?—Yes.

23,783. It included among its members the Governors of 30 States—passed resolutions and recommendations on the topics before it, and requested the Commissioners of Uniform State Laws to draw up a Marriage and Divorce Act on the lines of its resolutions and recommendations. Would you mind reading your proof from there; it will save a great deal of trouble if you would kindly do that?—Yes. The Commissioners on Uniform State Laws is a committee or council of lawyers which has come into existence within the past 25 years, on the recommendation of the American Bar Association, which is the National Association of Members of the Bar of the United States. Its object was to have an official body of lawyers appointed by the different States who could agree upon uniform laws in all States, and Statutes were passed in the different States authorising the Governor of each State to create that office. Under those laws the Governors of the different States have appointed one or two commissioners on Uniform Laws, whose duty is to meet at stated times in different parts of the country and take up subjects in which they think the States should have uniform laws, and recommend the uniform law they finally agree upon to the Legislatures of the different States.

23,784. You have been a commissioner?—I am a commissioner from the State of Missouri. We have succeeded in having several uniform laws passed on subjects such as the Negotiable Instruments Act, the Execution of Deeds of Real Estates, and Bills of Lading and Warehouse Receipts. At present the commissioners are considering a National Divorce Law, that is a divorce law to be adopted in all its provisions by all the States, because the Federal Government cannot pass a divorce law, not having jurisdiction over divorce. At the last meeting of the commissioners, held at Detroit, Michigan, in September 1909, the subject of divorce was taken up and discussed for several days. Different drafts of laws were submitted to the Commissioners, and the causes of divorce, and a great part of the Bill was practically agreed upon, but the matter was referred to committees to report at the next meeting of the commissioners to be held in September, in Tennessee.

23,785. Is that September of this year?—Yes. At that meeting the uniform law will probably be adopted.

23,786. Then that uniform law will be recommended, with the hope that each State will pass it?—Yes, and yet, as I say in my proof, I do not think the commissioners are very sanguine in regard to its being adopted by the States very soon, although it has been comparatively easy to have the States adopt uniform laws concerning commercial matters. It seemed there should be no difference as to questions of days of grace on a bill of exchange, or whether a note was negotiable, or how a deed should be executed, although there had been in the different States different laws

arising out of different decisions by courts in regard to that, but when you come to a subject which bears upon the religious or moral opinions or social customs of the community in a country like the United States, where in one section divorces are not only unknown but are absolutely prohibited by the State constitution, or are given only for one cause, while in another section of the country divorces are granted for the most trivial causes, the acceptance of the uniform law will be very slow, we think. Nevertheless, if the official representatives of all the States agree upon a uniform law, no doubt many of the States will adopt it within the next few years.

23,787. Then you put down what are most likely to be the grounds of divorce in this matter?—Yes. I mention the subjects which have been agreed upon so far by the commissioners in the States as the grounds for divorce, and I do not think any will be added to them. I think it will stand with those six causes.

23,788. Will you state what they are?—First, adultery.

23,789. The same for both sexes?—Yes; that has always been the rule in all the States. Then bigamy.

23,790. What is the distinction between bigamy and adultery, because they almost seem associated?—Only this, that all it is necessary to prove in the case of a divorce for bigamy is simply the previous record of conviction.

23,791. You do not have to prove the cohabitation?—No, simply the conviction for bigamy, then conviction for felony followed by at least two years' imprisonment in a penitentiary, intolerable cruelty, wilful desertion for two years, and habitual drunkenness.

23,792. What is considered by the commissioners to amount to intolerable cruelty? What is indicated there? Is it that which only affects life and health, or does it include that which amounts to insult as well?—The commission do not intend to make any definitions of these phrases. They will have to be left to the courts to construe, but of course all through the United States the word "cruelty" has a very wide meaning. It includes not only physical cruelty, but mental cruelty. I have not heard it mentioned here, but a little while ago a wife could not obtain a divorce on the ground of mere adultery, that the adultery was not cruelty. Under our decisions for a man to habitually associate with another woman against the protest of his wife, without any proof of adultery, would be considered cruelty; in other words, we have a mental cruelty, you might say. It extends to cruelty of that character as well as to physical cruelty.

23,793. The tendency is to leave that without considering any further what is meant by cruelty?—Yes.

23,794. So with habitual drunkenness, there will be no definition of that; it would be left to the judge's view as to whether it was habitual?—Yes.

23,795. I notice you omit the suggestion, in this Commission on Reformed Law, of insanity arising after marriage being a ground of divorce. We have had some explanation of that from Mr. Barratt, but not a very full one, as to there being some sentiment in America based upon a case from some State where an Act was passed which was afterwards repealed. Will you tell us more about that?—The opinion of all the commissioners was that it would be impossible, although I do not think any number of them wanted to include insanity arising after marriage, to have the States agree to that as a cause, on account of the bad flavour, I may say, throughout the United States, that this matter has arisen from the way it came into the law of one of the States, the State of Florida. Florida passed a Statute adding insanity arising after marriage to the causes for divorce. It was very soon found out that that Statute was passed for a special case, the case of a very rich man who was the owner of all the great hotels and railroads, and was one of the men engaged in developing the southern part of the State of Florida. It was alleged in the newspapers that he obtained the passage of the law by bribery and corruption, but I think the influence he used on the Legislature was, "I am a great benefactor,

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"I am going to continue to live here and build up Florida, and take good care of my wife; she is hopelessly insane; I promise you I will give her good support, build a house for her, and give her an allowance," I think it was 10,000*l.* a year, and on that it was passed and he obtained his divorce. But that somehow did not suit the American people. I recall very well that at the next meeting of the different Bar Associations of the different States held in each State, that particular thing was taken up and denounced universally by the lawyers. The result is the law of Florida has been repealed; the public sentiment was so strong against it.

23,796. In that case did the lady recover?—No. The law of Florida has been repealed, and it is not likely to be passed, I think, accidentally, without much consideration. It did get into the Statutes of one other State. I may say in explanation of this, in some way we are a sentimental people, and, as you know, if you read the decisions of juries in cases where a man is indicted for murdering the seducer of his wife, it is impossible to get a conviction. In the part of the country I come from a jury will acquit a man who shoots another in cold blood, without leaving the box. There is an idea that it is a mean thing for a man who has promised to take his wife in sickness and health till death does them part, if by the act of God she becomes ill—because they regard insanity as a disease—to try to get rid of her. I feel it is very firmly seated in the public opinion of America.

23,797. What you are saying would rather put this as having been the effect of the way it came to be introduced, and being based on a matter of sentiment rather than based on a true ground of reason?—You can put it in that way. Many men engaged in this kind of work of reforming the divorce law feel that insanity might be included, but they know public opinion would not justify the attempt to pass it through the Legislature or the State Parliament, so to speak.

23,798. The other sections of importance in the proposed Statute are with regard to jurisdiction. Perhaps you would read that to us?—These are sections agreed upon in regard to jurisdiction, to cover the cases of divorce obtained in one State, which shall have validity in another; "All suits for divorce shall be brought only in the State where the plaintiff or defendant has a *bonâ fide* residence. When courts are given cognizance of suits where the plaintiff or defendant was domiciled in a foreign jurisdiction at the time the cause of complaint arose, relief should not be given unless the cause of divorce was recognised in such foreign domicile. Where jurisdiction depends upon the residence of the plaintiff or of the defendant, not less than two years' residence should be required where such plaintiff or defendant has changed his or her domicile since the cause of divorce arose. The defendant should have full opportunity, by notice brought home to him, to have his day in court if his residence is known or can be ascertained. A divorce obtained by an inhabitant of a State in another State or country to which he has gone for the purpose of obtaining it, or for a cause which would not authorise a divorce by the law of the State of domicile, should have no effect therein."

23,799. Those are points more particularly connected with your difficulties in America?—They are connected with our different States and the going from one State to another for the purpose of obtaining a divorce, which does happen, but not to a very large extent, as I point out later.

23,800. We have probably had information about the confusion which has arisen through the courts of one State refusing to recognise the decree of the other. Perhaps you will tell us about the divergent States?—The two views taken in the United States of America are, first, that it is a personal action which requires the presence of the party in the State taking the jurisdiction. That obtains in perhaps one third of the States.

23,801. That is to say, they cannot deal with the case unless the defendant can be served with process within the State?—Yes. In two thirds of the States

they look upon a divorce suit as a suit *in rem*, and hold if one of the parties is within the State, that the court has possession of the *res*, that is the marriage relation, and can then proceed to hear the case and render judgment after a general notice of the pendency of the proceedings, in like manner as a court proceeds in a real action or in a suit for property which is in the custody of the court. In States where this rule obtains, divorces are often obtained without the other party knowing or even suspecting that such a suit has been brought. The husband deserts his wife and goes to another State, brings a suit for divorce, notice of which is given by publication in some newspaper which he selects, and which satisfies the law, but which he is certain she will never see. I have known cases of this character, where during the time of the filing of a suit and the entering of the decree the husband and wife were corresponding with one another, she never suspecting the true facts of the case. Later when the husband marries again, he has a lawful wife in his new State, and yet in the State which he left he has another lawful wife. If subsequently there is property to be divided, if there are children of both marriages, think of the confusion there will be. The object of this uniform law is to make one standard by which to test jurisdiction and the validity of the decree of divorce in every State.

23,802. In England we have no difficulty of that kind, because we stand on the foundation that the domicile of the husband is the only court, and if he runs away you still treat him as domiciled in the place he belongs to?—I understand that.

23,803. The question of public hearings is the next point, and it is interesting?—"Hearings and trials" should always be before the court and not before any delegated representative of it, and in all uncon- tested cases, and in any other where the court may deem it proper, a disinterested attorney should be assigned to defend the case."

23,804. That refers in the first part to the fact you take the evidence and hear the case before registrars, and people of that kind?—Yes.

23,805. And bring it up for decree before the judge?—Not very often. I refer to that further on. Except in the few States where there are separate courts of chancery, all our courts of general jurisdiction try divorce cases. It is considered an equity and not a law proceeding, and hence, except in the rare case where a Statute gives a right, no jury trial may be had. I do not find anybody wanting a jury trial in divorce cases.

23,806. I should be glad to have your views about that, whether you think it is any advantage in this class of case to have a jury?—I think it a great disadvantage. I think it would be far better that the judge should decide that matter, decide both the law and the facts, because, after all, as in equity, you will have some sort of a rule that could be followed and that one can know, while if you leave the whole question as to what is cruelty and what is habitual drunkenness to a jury, in each case you would not know what it was; you would have no definition.

23,807. Your view comes to this, that it is a kind of jurisdiction analogous to equity jurisdiction; and that the cases are better dealt with by the judge alone than by having the interposition of the man in the street, as it were, who has not any experience?—I think so. That is the view of the commissioners on Uniform State Laws.

23,808. Have they recommended no jury?—They have recommended that the hearing and trial should always be before the court, meaning without a jury. Then it says, "and not before any delegated representative of it." That is a question you put a moment ago.

23,809. We have not that here; it is always before the judge?—I would say in the first place, that our constitutional provision would prevent a trial *in camera*. Indeed, our courts have held in numerous cases, even where the evidence in a trial in a criminal case is of the nature that the public generally could be prevented from hearing, that the constitutional provision with regard to open courts prevents a judge hearing that

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case *in camera*. He may use his discretion about young people and advise females to withdraw, but he cannot say, "This evidence is of such a character now that I think I will clear the court."

23,810. I was rather under the impression, speaking from recollection, that Mr. Barratt told us that in most of the States in divorce cases the judge had power to close the court?—Not in most of them.

23,811. In some of them?—No, I do not know anywhere where it is done, in my experience. It may be so in some of the New England States, where I am not familiar with the practice, but in some States the practice is to refer the taking of testimony to the master, and the master reports, but the judge never sees the parties, and the judge makes the decree on the report of the master. Then it permits—perhaps that is what Mr. Barratt may have been referring to—the judge to seal up the proceedings, order the proceedings to be sealed and kept from the public and press.

23,812. The hearings of evidence before a master?—They are not public; they are in private.

23,813. So that practically there is, except the discussion in court, a hearing *in camera*?—Yes, because they hold that to be not a public trial, but simply a reference. This practice has been criticised very much, that is the referring the case to the master and granting the decree on the reading of the report without seeing the parties, and having the papers sealed up. The late Mr. Justice Brewer condemned it very strongly in an address some months before his death. That was published in all the papers at the time. Then we come to the question of a disinterested attorney, someone appointed to watch on behalf of the State in the case of undefended cases. There is no way in most of the States in which the State can intervene in the interest of the public. We have nobody in the nature of what I may call a public defender.

23,814. Nobody like the King's Proctor?—No. Occasionally I have known a judge who at the beginning of his term has been so convinced that there must be collusion in undefended cases that he has requested members of the Bar to appear for the defendants, but he did not continue this very long; there being no authority in him to order any compensation to the attorney, he was soon given to understand that the Bar did not take kindly to this sort of service.

23,815. Is the proposal that a disinterested attorney for the State should watch every case?—Yes, that is what the uniform law proposes, that a disinterested attorney should be assigned to defend the case and should be paid by the State.

23,816. That means before the case is finally decided?—That is when the case is called, and by that we mean that the judge should have a right to appoint somebody like the King's Proctor, to hold office under him for a term to attend to those cases.

23,817. May I suggest when a case is called there is no opportunity for the disinterested attorney to investigate it unless you have a decree nisi?—Exactly, unless you adjourn it until he can look into it.

23,818. Because the disinterested attorney would see nothing more of the case than the judge sees. Has the working out of that been considered?—No.

23,819. Our system allows for the decree nisi, and then the disinterested person for the State looks into it, probably after a neighbour or some person has written to tell him about it?—Unfortunately, we have not anything in our practice to justify that.

23,820. However, you are alive to the difficulty which meets us. Then with regard to co-respondents?—This is the next section of the Statute: "Anyone named as a co-respondent should be given an opportunity to intervene." A co-respondent in our practice is not a party, you cannot make him a party. He may, of course, be called as a witness, but no verdict can be given against him in the suit. An action for damages will lie—the common law action of criminal conversation—but it is so seldom resorted to as to be almost obsolete. I am speaking of divorce for adultery. I have never seen, or in my practice known, of such a

case in any of the Western or Southern States—that is, a common law action for damages.

23,821. Is that because public opinion is against an action for damages?—Public opinion is against a man taking money under those circumstances. It will punish, and indeed we have Statutes in some of the States in which the defendant in that case could be criminally punished, but they are not resorted to; there is nobody to put it in motion. I do not know why. There are not many prosecutions.

23,822. Is adultery punishable as a crime in some States?—Yes.

23,823. But it is not put in force?—A single act of adultery is not; the crime is living in adultery.

23,824. Is that Statute put in force?—Not often—very rarely. On the other hand, I have known actions by the wife against the other woman for damages for the alienation of the affections of her husband.

23,825. Does that action lie in the States?—That has been held to be a proper common law action with us since the passing of the law putting men and women on the same footing in the courts; giving the woman all her property and a right to sue separately. They hold that, having that right, having her own property and the right to sue without her husband joining, the common law action of criminal conversation has descended to her. Then upon the question of finality of decree, the proposed section is, "A decree dissolving a marriage should not become operative until the lapse of a reasonable time after hearing or trial upon the merits of a case."

23,826. That would give the power?—That would give the public defender time to look into the case. That is the great trouble with our present practice. In only three States I know of are interlocutory decrees provided for by Statute. Almost universally the decree is final when pronounced, and it is not an infrequent spectacle to see a woman who has obtained a divorce walking out of the court room with the man she intends to marry, and going across to the office of the justice of the peace and being married within half an hour. That is frequently done.

23,827. Do any of your States deal with the prohibition of that?—Yes; they prohibit the re-marriage of the guilty parties. By the "guilty parties" I mean the defendant, whether the defendant is a man or a woman. They do not restrict it to a marriage between the defendant and the co-respondent, but they actually prohibit, where the suit is brought for divorce, the defendant from marrying again during the life of the plaintiff.

23,828. Is that all over the States?—No, but in quite a number of them. This prohibition is of very little account, and does not make the divorce in the view of the courts a conditional one at all. The divorce is absolute, but this is a penal law which punishes the party, under this disability which the Statute places, if he marries during the lifetime of the other party. All he has to do, however, is to cross the boundary into another State, because the penal laws of one State do not extend into another, and if he crosses into another State he may marry there and the marriage is perfectly legal. I have an interesting decision here that was sent to me since I came to London, where a man had been divorced in New York upon the ground of adultery, and he went to Pennsylvania, where he applied for a marriage licence to marry in Pennsylvania. The officer, on learning he had been divorced a few weeks before in New York, refused it on the ground that he was not entitled to marry again, and this is a proceeding I have here in the courts of Pennsylvania for a mandamus to require the issue of a marriage licence to him, and the mandamus is granted by the court, the court saying the law in America knows only two forms of status as to matrimony, married and single, a man who has a wife or a woman who has a husband. Taking one party out of the marriage, by whatever means, leaves the other single. So that he is free to marry, although he commits a crime in the State he came from by marrying; but he could go back safely to the State he came from, because if he is indicted for marrying in New York he has only to say he was not married in New York, therefore he is safe.

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23,829. Has your conference, which is to meet in September, proposed to deal in any way with that state of things, the conference which has partly done its work?—It does not.

23,830. Can you tell me whether public opinion in America would favour the marriage of the two guilty parties to an adulterous intercourse?—I could not say, because I have never heard the question discussed. I know of nowhere where it has been taken up.

23,831. These Statutes referring to prohibition are rather in general terms to any re-marriage?—They are in general terms.

23,832. Has the Legislature never directed attention to the simple question whether it would be an advantage to prohibit marriage between two guilty people?—I do not think that has received the attention of any of the Legislatures of the States; it has not been discussed.

23,833. Have you formed any opinion yourself about it or not?—No, I have not.

23,834. The next point is what I may term migratory divorces. I do not know that troubles us very much here. Perhaps you would like to have it appear on the notes?—I would, for this reason, that my opinion is that the number of those divorces is quite few. My experience is in the Western States, west of the Mississippi, and there the divorce laws of all the States are so nearly uniform that there is very little need to go from one State to another, and I have not known of very many cases of people coming from other States to get divorces except in the case where one has come for the very purpose of getting a divorce by fraud, I mean where he had no cause, sometimes a man, sometimes a woman, where there is no legal cause, and where if he or she could have an opportunity of defending, the divorce would not be granted.

23,835. Are there many of those cases?—A good many of those cases are to be found in our reports. Of course the decree may be set aside by a court for that fraud at any time. The fact that there is a constant movement from one State to another, that we pass over the boundary from one State to another as easily as we go from one city to another, makes all those figures in the official reports as to the number of divorces where marriage has taken place in another State, of very little value. I do not think they are a very large number. Of course, the newspapers have exaggerated a good deal. At one time, a few years ago, there were a number of people known in society in the east that went out to South Dakota, where the law for a few years permitted a divorce after six months residence, and gave jurisdiction, and those cases caused the public to think that there were a good many migratory divorces, but I do not think there are many.

23,836. Have you sufficiently covered what you wish to say with regard to migratory divorces, or would you have that paragraph as part of your evidence?—I just wanted to add to what I said as to this constant movement from one State to another from the east to the west, the fact that so large a number of divorces are obtained by foreigners who were married before they came to the State, makes the figures worthless for any comparison, in my opinion.

23,837. The next head is the solemnisation of marriages. There has been almost some controversy in previous evidence about this; perhaps you will tell us about it fully?—I have a strong opinion upon that, and it may be because of my religious opinion of marriage. My opinion is that a marriage in America before a civil officer does render it a less serious undertaking in the eyes of the parties than where it is in the presence of a minister or priest—by "minister" I mean a Protestant.

23,838. Do you belong to any particular branch of the Protestant Church?—I belong to what you call here the Church of England, the Protestant Episcopal Church. Beside the clergy, any judge of any court, including justices of the peace, may perform the ceremony in any part of the United States. Persons of English descent, or Irish or Scotch, are generally married by a clergyman, and so as to foreigners who are Catholics. Non-Catholic foreigners however, particularly the Germans, seem to prefer the purely

civil marriages; most of them employ the justice of the peace. The German of wealth will, however, often call upon a judge—even the judge of an appellate court—just as a churchman of prominence may like to have his daughter married by a Bishop. When I was on the bench I always persuaded the parties who applied to me to resort to a clergyman or priest. I always succeeded in getting them to go, although I have no doubt I could have been forced to under the law if they brought a mandamus.

23,839. Could they come to you without previous publication, or licence, or anything of that kind?—Not in many of the States now. When I was on the bench no licence was necessary, but now I think nearly all the States require a licence to be issued after an affidavit, I think, generally of the parties, who have to bring themselves within the law, and the absence of disqualifications. I want to say that there have been some exaggerations in the public press on this point of the justices marrying, I mean rather the character of the civil officers that marry, and the statement of a magazine writer that marriages are frequently performed in a saloon by the saloon-keeper should not be taken seriously. There may have been years ago, in some of the newer States, a saloon keeper now and then who was elected a justice of the peace, but our very strict excise and licence laws of to-day would make this impossible. I may add probably the writer of that magazine article, which I think was published in Chicago, may have referred to the occasional spot in the Far West, in the interior, where one man, the leading citizen of the locality, is what they would call there "the whole thing," where he is a general merchant, post-master, justice of the peace, inn-keeper and chief of police: of course in such a community as that he would be the only man, and he would hold the joint office of justice of the peace and inn-keeper or saloon-keeper, but those are hardly to be mentioned. I never knew a case myself.

23,840. At the same time you would regard it as desirable that the formalities should be as serious as it is possible to make them?—Yes. My opinion is, from what I have seen of the class of people who obtain divorces in a city like St. Louis, between 800,000 and 1,000,000 inhabitants, with a large German and foreign population, that the great majority of the divorces are among the Germans who are married by justices of the peace.

23,841. The next paragraph deals generally with divorce legislation and public opinion?—I am simply quoting Mr. Walter George Smith, of Philadelphia, who was chairman of the National Congress of Divorce of 1906, and is at present the President of the State Commissioners on Uniform State Laws. In a recent address he reviews, very accurately, I think, the history of divorce legislation in the United States, and of the changes of public opinion with regard to divorce. This was an address he delivered on opening the subject of divorce at the commissioners' meeting: "There have been divorce laws in almost all of the States of the Union since the adoption of the Federal Constitution, and during the Colonial period, divorces were by no means unknown, especially in the New England Colonies. The changed attitude towards marriage brought into the religious belief of many European peoples by the leaders of the religious revolt of the sixteenth century, bore fruit in divorce legislation. Since the opinion of the leaders of Puritan thought did not differ essentially from that of Milton, that marriage was entirely devoid of sacramental character, divorce seemed under certain conditions entirely responsible. There is no evidence, however, that there was at any time any element in Society of sufficient respectability to attract notice that advocated divorce on any ground excepting such as made the condition of the injured party intolerable. Such teaching as that the marriage contract differs in no respect from any other contract, and the status may be terminated at the will of either of the parties whenever the burden becomes irksome, finds no support in the early history of divorce in the United States. While Protestant Christianity had given up the sacramental view of marriage, it

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"retained in practice the same respect, or 'rather reverence, for marriage as all bodies of Christians have always entertained. And so the principle, which is fundamental in Christian society, and distinguishes it from the highest civilisation of Rome, that marriage is monogamous and life-long, has been practically accepted by all sociologists and legislators up to very recent times—and this, notwithstanding the fact that Protestant Christianity interpreted the teachings of our Saviour so as to permit divorce in intolerable cases, such as adultery, cruelty, and desertion, which were gradually extended to conviction of crime and other causes that need not be enumerated. Within a generation, however, this portentous revolution in the attitude of men and women towards the most important status of social life has been gathering force, and probably for the first time since Christianity came into general acceptance among civilised peoples, a school of sociological teachers has had the courage to come out and frankly accept the logical consequences of the proposition, so often asserted in the past, that marriage is a civil contract only. While admitting its accidents are somewhat peculiar, none the less, according to this school, there is no philosophical reason why it should not be treated like any other contract, and when either party commits a breach of its conditions it should be dissolved. Such teaching has met acceptance and appears to be gaining ground, notwithstanding that many of its advocates have had the candour to admit, that in order to sustain it, the sanction of Christianity in any of its forms must be cast aside." That is Mr. Smith's opening at this commission meeting which took up the subject of divorce.

23,842. It cannot be sound to admit that it is the same as any other contract, because you have the interests of the parties and the children to consider; and they are brought into being on a different footing. That only concerns the two parties to it?—That is my personal view, and the view of the large majority of the people.

23,843. I rather gather it does not meet with his approval?—Not at all; it is a sketch of the history of this subject in the United States since the revolution. I think it will be found—this is not from Mr. Smith; this is my own observation—that in what we may call the Puritan States of the Union, the New England States and one or two of the North Western ones which are settled for the most part from New England, the grounds of divorce are more numerous than in the States which you may call anti-Puritan, that is those where Sunday laws and anti-liquor laws and restrictive legislation of this kind are not sustained by public opinion. I do not undertake to explain this, but I think it is a fact; in other words, States like New Hampshire and Vermont, and some of the Western States like Ohio and Kansas, which were settled by the New England anti-slavery men in the early struggles between the North and South, have more grounds of divorce on their Statute books than States settled the other way, through Virginia, and we say from history, from the cavaliers of this country, where they have never had any rigid rules in regard to personal conduct, and yet their divorce laws are not as lax as they are in what I may call these Puritan States. The next heading is Number of Divorces to Marriages. In my opinion the ratio of one divorce to 10 or 12 marriages, which I understand the writers on the subject state to be the ratio, is too high. Statistics as to the relative number of marriages and divorces are not to be relied upon. In the Western States, until a very few years ago, there was no regular system of registration of marriages or marriage licences, in fact, in a good many of them marriage licences were not required, and there was no attempt at registration of marriages. Even where recent Statutes require the registration with a central officer of marriages and of licences it is not done with regularity at all. This arises from two reasons, first there is no penalty prescribed for the failure, and secondly, the central officer considering himself burdened with a new duty for which he receives no additional compensation discourages his subordinates, troubling

him by sending him their records. Again, a very large proportion of the divorces in the Western States are among foreigners. That they have left their native country shows a restless spirit and a wish for change. The women find a more independent status in the United States than they found at home, and speedily take advantage of their opportunity. Then the marriages, not having taken place in the United States, are not reported. If any one will watch—as I have often done—the crowd of men and women on Divorce Day, as it is called, in one of our great western cities, he will see, as I have seen, that the faces of nine out of ten of the applicants are foreign, and neither native nor Anglo-Saxon.

23,844. All that is due to the present state of unsettlement in America, where it has been gradually peopled in the way we know that it has?—Yes. Then with regard to divorces for adultery, the divorce statistics likewise show a small proportion of divorces on the ground of adultery, but here the true cause does not always appear. Desertion or cruelty is the ground stated in the petition in very many cases where adultery might be proved, but the wife does not want the details to go before the public, neither does the husband. He acknowledges cruelty and the divorce is granted. This is well understood by the clergy as well as by the general public. When I say it is well understood by the clergy, I mean this: the Roman Catholic Church absolutely, and the Protestant Episcopal Church except in the case of divorce by adultery, refuse to re-marry a party at all. I have more than once asked an Episcopal clergyman how it was he married so-and-so, who had obtained a divorce on the ground of desertion, and his reply has been, "Why, she brought me all the evidence that she had, and it is quite clear to me that the husband was guilty of adultery"; in other words, the clergyman goes behind the record, the decree, and that very fact shows why the small number of divorces for adultery appear. That is not a good showing for morality, but I am trying to state the facts of the case, and what I know about the statistics.

23,845. Do the clergy refuse to marry either party unless the divorce has been granted on the ground of adultery?—The Episcopal Church refuses.

23,846. If it has been on the ground of adultery they will re-marry either party, or only the innocent party?—There each clergyman takes his own view of the matter. Some regard the marriage as at an end, and on the ground of public policy they had better marry again. If the marriage has been properly dissolved they will marry the guilty party again.

23,847. The next paragraph is with regard to the cost of divorce?—Yes. My statement here is that if there should be any question made as to divorce being easy in the United States, there is none that it is cheap. With the exception of one or two States where jurisdiction is solely in a separate court of chancery, and where the expenses are high, as they are in chancery proceedings generally in America, the cost of divorce is a trifling matter. The cases, except where the parties are wealthy, and the suit is contested, are in the hands of young lawyers, who are quite satisfied with a fee of 2*l.* or less; and another 2*l.* will cover all the court costs. If the suit is brought by the woman, or is defended by her, the court will order the husband to pay the filing fee, and a fee to the plaintiff's or defendant's counsel, as the case may be, and sometimes order him to make an allowance for her support *pendente lite*, even where the husband brings a suit. The young lawyer will often take cases for women at least on speculation, as it is called, for even if he does not obtain all his fees and costs in the method I have spoken of, he can always sue the husband for his charges, as our courts have decided that the bringing or defending a suit for divorce is a "necessary" for which the husband is liable.

23,848. I take it that the courts in the States which exercise divorce jurisdiction, exercise it in all parts of the country?—Yes.

23,849. They do not confine themselves to the capital of the State?—No. All our courts of general jurisdiction have jurisdiction in divorce, so that divorce is right at their home. It is in every city and county;

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in other words, the divorce jurisdiction I presume is as general as it would be in England if the county courts, as well as the superior courts, had jurisdiction in divorce cases.

23,850. Do you think it is desirable that the courts should be accessible in that way, or that they should be confined to the central court of the Metropolis?—I think it is better that all the courts should have jurisdiction, that the parties should not be put to the expense of going to a central point. If our central court, which is our Supreme Court, located in the State capital and does not move from there, only had jurisdiction, it would be expensive by the additional cost, travelling expenses, and the employing of local attorneys there. The divorce suits are in the hands of young lawyers. It is in this way; you will find in the large cities that every firm of lawyers who have considerable practice have attached to them a number of young men who have desks in their office, young men who are just called to the Bar; they are not partners, but they are allowed to remain there. Sometimes they become partners. They attend to matters given to them by the larger firm, when the firm cannot attend to them, and almost universally the divorce cases will be thrown to those young men, the larger firm having no responsibility.

23,851. Those are cases of the poorer classes?—Yes, the poorer classes, I mean.

23,852. The next paragraph deals with divorce by mutual consent?—Yes, I wish to say, that although none the United States permit divorce by mutual consent, as I understand is allowed in some European countries, and in Japan, still we have it practically in the United States. The allegation of cruel treatment or indignities suffered by the wife or husband, as the case may be, is easily proved. The fact that if the defendant makes default, there is no provision for the State to intervene, and get at the real truth of the matter, and that all the divorce cases in nearly all the States are heard and decided by the ordinary courts of record, whose dockets are always crowded with other cases, and which are subject to public criticism if they are behind in their work, renders it impossible that it should be otherwise. The judge listens to the plaintiff's story, which is corroborated by a friend of his or hers. There is no rebutting evidence, and the only thing he can do is to give the decree. With what dispatch this is done is illustrated by a letter sent to my "Law Journal" a few weeks ago, containing an extract from an Illinois newspaper, praising a young man, who had just been elected judge, and the paper said that there were great hopes that cases of all kinds would be promptly decided by the new incumbent of the office, as on the opening day of his court he had heard the evidence and granted thirty-five decrees in divorce cases. Further than this, there is a large public opinion that looks with favour upon the release from the matrimonial tie of parties to whom the yoke has become unbearable. One of my colleagues, in an article, published in my "Law Journal," cites this as one instance, among others, of the working out by society of its opinions, even though they are contrary to legal rules. It is a settled judicial doctrine that opposes collusive divorce. Yet every morning paper in America bears witness how little force it has in practice. What would the average community do to a supposed gentleman convicted judicially of extreme cruelty to a lady. Yet there are respected persons in all communities against whom there are such records. Extreme cruelty has become a convenient fiction to to cover up that incompatibility of temper that may not unreasonably exist between a lady and a gentleman. The legal theory, the judicial decisions defining cruelty, the judge-made rule against collusion, remain in the books. But husband and wife agree upon a settlement of property; they agree that she shall aver and prove cruelty unopposed; the newspapers publish the fact, the ritual of the law is gone through with, and a decree is entered.

23,853. That does not seem a very satisfactory state of administration?—No.

23,854. It seems rather to rest in the way things are administered than in the foundation of the law

upon which they are administered?—That is so. There is one matter I have noticed which has been mentioned in the proceedings of the evidence here, and which I assume is before this Commission, that I forgot to mention in this memorandum. If you will permit me I will say a word upon that; it is in regard to the publication of divorce proceedings. I think that is before your Commission and has been put before it by a number of witnesses. I do not think there is any complaint in America outside the great criticism of what we call "yellow journalism"—which goes into a man's private affairs and exposes them to the public whenever they get a chance—I do not think there is any criticism directed to the publication of divorce proceedings particularly. Our best papers do not publish the gross details of proceedings. In our large cities the divorce courts are issuing decrees every week, and it is such a common thing that nobody takes the trouble to make a column out of divorce proceedings, unless it is a case where the parties are known in public life, or something of the kind, and then they go into very great detail. Where our publication does do great harm, the methods of our press, is in this respect, that they mis-state the grounds of divorce, the true grounds of divorce in particular cases; for example, if in an application for divorce on the ground of extreme cruelty or desertion, or adultery, the woman happens to say in the course of her evidence that her husband snored very loudly, the reporter will ignore everything except that, and will make out the judge has granted a divorce on the ground that her husband snored. Or if the husband should say, regarding his wife being of a frivolous nature, to corroborate his views, that she was not attending to household duties, that she would sometimes lie awake for an hour or two reading novels in bed, some newspaper the next day will put that as the sole ground, and say, "Husband granted divorce because his wife 'read novels in bed.'" In that way the newspaper publication of that mis-statement lowers the court in the estimation of the public. The man in the street says, "What kind of a court is that to give a man a divorce 'because his wife reads novels in bed.'" Now when you come to dealing with the publication of divorce proceedings you are in this difficulty, our constitutional provisions concerning the liberty of the press are construed in such a way as to make it impossible for any Legislature to prevent the publication of anything except that which is really obscene, which our courts hold outside the Constitution. In most of the Western States we have a provision to this effect, that every man shall be free to publish what he pleases, being responsible for what he does. That prevents anything like censorship, or anything like injunctions in equity to stop the publication of a libel. In only one or two cases have the courts construed that into a provision, but they did so in one of the States where a Statute was passed to prevent newspapers publishing the details of a public execution, and the Supreme Court said the Constitution permits a paper to publish what it pleases. We feel that the liberty of the press in America has gone too far. I should like to refer to what I have observed since I have been in London. I am going to say when I go back to my colleagues and make my report, I think that one reason why it takes so long in our country to obtain a jury to try a case of great public interest, say a murder like the Thaw case, is that the whole case is tried in the newspapers beforehand, and the result is that everybody has made up their mind about the thing. It has been gone over, and it is impossible to get a jury, because we require a man to be absolutely indifferent, and we have an examination of the juror as to his bias which is very elaborate, before he is adopted as a jurymen. I understand here that sort of discussion of a case before the court is not permitted by the English law, and would be a contempt of court. I think something like that will be adopted in America, and of course if once the judges treated it as contempt of court, they can readily make that an exception of the constitutional provision, because they are the people who construe it.

23,855. Broadly speaking, do you think it desirable in the public interest that the details of these un-

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pleasant cases should be published?—I cannot exactly bring my mind to distinguish between the publication of the facts in a divorce case and any other case, for instance, an action for breach of promise of marriage, or seduction, or a criminal prosecution for some sexual offence. The constitutional idea upon which our Supreme Courts rely when they declare unconstitutional a Statute limiting the press, is that it is for the public interest that people should know what is going on, and it is better that people should know that their misdeeds will be held up rather than concealed.

23,856. Would that be so even if the reading of the details had a general degrading public influence?—No, it would not. There might be a reasonable limit found, of course. It would be hard to say just how far the details should be entered into.

23,857. Will you refer to the last point in your proof?—Yes. In summing up, I want to say that, from considering and reading different opinions that have been given from time to time, and applying my observation to the matter, I do not think that the general standard of morality is any lower in those States where divorce is easy, and divorces are frequent, than in those in which they are difficult or even impossible to obtain. I have spent some time in States where divorce is almost unknown, and I must say I do not think there was any substantial difference, and if there was any difference it was a little in favour—I mean the general idea—it was not quite as high as in a State where divorce was easy.

23,858. Are you able to give any information as to the state of things in South Carolina, where divorce is not permitted at all?—Yes, there you have to take into consideration the colour line and the negro question. There the standard of morality among the whites is very high, but at the same time among the negroes it is very low.

23,859. We are told in South Carolina that there is legislation directed to providing how much a man may or may not leave to his illegitimate children?—I believe there is a provision of that kind.

23,860. Is that resulting from the fact that the State itself has been driven by the prohibition of divorce to recognise to a certain extent illegal unions?—I think so.

23,861. I think that closes your proof?—That is all I have to say.

23,862. (Mr. Brierley.) You have told us that in 1906 there was a conference of delegates appointed by the Governors of the different States. At that conference we have been told by witnesses that the Uniform Divorce Law was drawn up. Was not that found satisfactory. Is that the reason another law has been proposed?—That was simply a voluntary conference without legal authority. It was like a convention, delegates invited to meet and discuss the question. All they could do would be to say that we, as a conference assembled, with the delegates and others, recommend this to the State, but that has no effect. There are so many bodies in the United States meeting and declaring themselves in favour of changes in the law that the Legislature is overwhelmed with suggestions of that sort. Those would come as resolutions of bodies that have met at a certain place, that the law should be changed. The next one that was called, in 1910, went about it in a proper way. It again endorsed the recommendations of the first congress, and asked the only body that has official authority to act, the Commissioners on Uniform State Law, to draft a law as near as possible like the one they recommended.

23,863. Do I understand that the law recommended by this Commission of 1909 is practically the same as that recommended before?—Practically the same as that one taken up.

23,864. The 1906 Bill or proposal proposed to grant separation *à mensa et toro*. Does the present one?—The present one does also.

23,865. There is rather a peculiar ground, namely, that separation should be granted on the application of the wife for the insanity of her husband, but not *vice versa*. Does that appear again?—That was rejected by the Commissioners of Uniform State Law. So far it has not got into the new Bill.

23,866. They have rejected lunacy altogether as a ground for divorce or a judicial separation?—Yes. You must remember that the final draft has not yet been approved.

23,867. (Chairman.) Do you think you could send us, when it meets in September, the final law as it will be passed?—I have said already I think that these provisions I have quoted here will be adopted.

23,868. Will you be there?—I go back to America in August.

23,869. Will not you be at the September meeting?—I hope to get back in time to go there.

23,870. Do you think after it has met you could send us a memorandum of what has been adopted?—I shall be very glad indeed to do it. I will take pleasure in sending that at once after the meeting of the commission.

23,871. (Mr. Brierley.) You mention the Florida case as having had a good deal of effect. That took place in 1901?—Yes.

23,872. There are some five States that have included in their laws insanity as a ground of divorce?—I think two or three, not five.

23,873. There are some?—Yes.

23,874. They have not altered their law?—One of them has.

23,875. Which is that?—I think California, but we found out that some of these appeared, in one case at least it appeared, in a revision of the Statute which had only been formally adopted by the Legislature. That is purely a method of legislation. We have a revision of our State Statutes once in 10 years, and it often happens that some member of the committee which revises the Statutes wants some new provision, and it is placed in at his request by the committee, and it is passed by the whole Legislature in an omnibus way without noticing the change in the law. One of these had got it in in that way and the Legislature never intervened.

23,876. At any rate it comes to this, in a very few States up to now, at all events, has insanity been made a ground for divorce?—Yes, a very few.

23,877. That of course would not be accounted for by the Florida case?—No, my opinion is that the general sentiment of public opinion is opposed to divorce for post-nuptial insanity.

23,878. There is a substantial distinction between lunacy and the other grounds, namely, one is a disease possibly without the fault of the other party, and the other causes arise from the fault of one of the married persons?—Yes.

23,879. That might have some effect on public opinion?—I think it has. In fact, in our commission this view was taken. A man said, "If you are going to make insanity a ground of divorce, why not make any incurable disease of any kind a ground of divorce?" That was the view of those, but there was a good deal of sentiment attached to it, and it may not be founded on strict logic.

23,880. It may not be founded on substantial grounds?—I feel that myself. That is the view of the public on that point.

23,881. (Judge Tindal Atkinson.) I understand you are clearly of opinion that the facility of divorce does not affect the morality of people?—I am.

23,882. Are you equally of opinion that the positive denial of divorce may affect the morality of people?—Yes, I think so.

23,883. In your State you have what are called State courts?—Yes.

23,884. Have you any courts there which correspond to our county courts in England?—No, I think not, because we have courts of general jurisdiction and then one Appellate Court with no original jurisdiction. The judges of the courts of general jurisdiction reside in the different towns and cities in the State, and the courts, while they are like the county courts in that respect, have also the jurisdiction of your courts of general jurisdiction.

23,885. The only courts corresponding to the county courts are State courts with universal jurisdiction?—Yes.

23,886. (Chairman.) Are there no small debt courts?—Yes, but they have no jurisdiction in divorce cases.

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23,887. (*Judge Tindal Atkinson.*) There are small debt courts?—Below these courts? .

23,888. Yes?—Yes.

23,889. What is the limit of their jurisdiction?—200 dollars, and they are limited to cases of contract. They have no jurisdiction in torts or cases arising out of land except summary proceeding as to landlord and tenant and things like that.

23,890. What is the nature of the judges who preside in these small debt courts?—They differ somewhat. In the large cities they are the same men, members of the bar of the same experience as the regular Superior Court judges, but in the country they are not. They are not in the towns where they are under a certain population, and in those towns and the counties they may be men who are not members of the bar, like a justice of the peace.

23,891. Have you enough State courts in the State for divorce purposes to which all the poorer classes can resort?—Yes.

23,892. There is no difficulty about getting to those courts?—No, and if the cases are undefended they are disposed of at once.

23,893. Is the practice much resorted to, of taking the evidence by deposition and forwarding it to the State courts?—In very few States.

23,894. It can be done?—It can be done in New York, and I do not think more than four or five States of the whole 40 States.

23,895. Do you think it is advisable as far as possible to drive the poorer classes to sue *in forma pauperis*. Do you think it is a good procedure if you can avoid it?—You mean as a general principle.

23,896. Yes?—No, I am rather inclined to think that a man who has a case or has a grievance against another, no matter what class he may be in, ought to be able to obtain relief in a court without being troubled about the money side of it.

23,897. The State should take care of him?—Yes.

23,898. Does the diversity of treatment amongst the judges create any difficulty in the administration of the divorce jurisdiction?—Yes.

23,899. It does create difficulty?—Yes.

23,900. And is considered an objection?—Yes, although there is to a certain extent more uniformity than there would be if divorce cases were tried with juries. Yet there are some judges that are very lax and very easy in granting divorces, while with some it is very hard to get a divorce.

23,901. With reference to the jury, does it not strike you that whenever it is a question of adultery, a jury may be a useful tribunal rather than a single judge?—Yes, as in most questions of fact.

23,902. Your objection to a jury is when you get to questions of cruelty, and those questions about which there may be great diversity of opinion. On adultery you think a jury would be useful?—I think many judges would be glad to submit those questions of adultery to a jury rather than have to decide them themselves.

23,903. (*Sir William Anson.*) I understand cruelty is practically used to cover incompatibility of temper in many cases?—In many States. You mean cruelty is construed in that way.

23,904. Or rather incompatibility of temper is construed to be cruelty?—No, I mean to say this, where the case is not defended, incompatibility of temper is the real cause for the application. The application is made with the consent of the other side, and the plaintiff easily makes out a case of intolerable cruelty by exaggerating a little bit the real facts of the case. So far as judicial decision goes we distinguish cruelty. We always use the word in most of the States, or the adjective "extreme" or "intolerable," meaning that it shall not be ordinary, not slight cruelty, so that incompatibility of temper is not considered cruelty from a legal point of view.

23,905. In an undefended case with the sort of exaggeration you have described the cruelty practically becomes—?—Yes, practically becomes—anything becomes cruelty—an agreement between the parties that they are tired of the marriage relation and would

like to divide the property and start again becomes cruelty when the case is undefended.

23,906. The judge, I suppose, ought to inquire as to collusion?—Yes.

23,907. Does he ever do so?—The judge cannot inquire whether there is collusion, because there is nothing before him to suggest it, and nobody to raise the point. As I said, the plaintiff appears with one or two friends who swear that they have seen these things, and that they have witnessed certain acts of cruelty, and they are perhaps not guilty exactly of perjury, but they have heard a good deal of this from the plaintiff, who has told them about it, and they testify to enough to make a legal case of cruelty. The judge inquires, "Where is the defendant?" and the wife says, "I do not know, I have not heard of my husband; he has gone away and left me." He has gone away on a convenient trip it may be, and will turn up later, but she says she does not know where he is, she has not heard from him for some time, and there it is.

23,908. There is no procedure to enable the judge to carry on an inquiry?—None whatever.

23,909. You do not think that a jury would be a suitable tribunal to decide a case of cruelty?—No, it would be worse in a defended case; the husband would always lose. Any kind of case made by the wife would be sure, I think, of obtaining a verdict in her favour for cruelty.

23,910. You do not think the general standard of morality is affected by the freedom of divorce?—No, that is my personal observation.

23,911. Are the conditions of home life affected, and the condition of the children?—I cannot speak on that. I have never investigated that. I meant to say that my observation is that the laws against living in adultery, and the enforcement of the laws against houses of ill-fame, and laws of that character, are a little stricter in the States where divorce is easier than they are in the States where it is difficult.

23,912. So far as marriage is a contract by two parties to be faithful to one another, the contract is observed?—Yes.

23,913. So far as it is a contract to establish a home and bring up children, you are not prepared to say what it is?—No, I have not thought of it.

23,914. You have not considered whether it is favourable or unfavourable?—No.

23,915. (*Sir Frederick Treves.*) You say your commission is unanimously opposed to insanity as a ground of divorce?—I have heard no dissent.

23,916. You have given some reasons for that, that the plea of insanity is difficult to establish in a court of law in America. Is not the plea of insanity very often used in your courts on what might be called honestly unsubstantial grounds. I was thinking of the Thaw case?—Certainly.

23,917. Do you think that affected the decision of your commission at all?—Yes, I think so. We know very well that that is the ground upon which our western juries acquit a man for killing a wife's seducer. He testifies that he was so wrought up with rage that he could not help it, and the jury say he was temporarily insane. That is true about our plea of insanity; it is carried to an absurd length in criminal cases.

23,918. It is carried to such a degree that it would be difficult, or possibly unfair, to allow it to be a plea on which to establish divorce?—Yes.

23,919. (*Sir George White.*) We had some evidence before us, I think from Mr. Crane, with which I take it you do not agree, in regard to the very light way in which marriage was contracted. I turn to my notes and I find he said the form of marriage, in the Western States in particular, so often took place before a justice, who was constantly a publican, and the contract is made often over the bar?—I never heard of such a case in my life.

23,920. That is outside your knowledge?—It may have occurred in a few cases in the extreme west, where the justice was the inn-keeper of a small town, but I have never known it.

23,921. Is it frequently the case the justice is an inn-keeper?—No.

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23,922. Can you explain why, according to your statement, which is an interesting one, the laws in what may be termed the Puritan States are more lax in regard to the question of divorce than in certain other States you have mentioned? Do you suppose it arises from the fact that morality is best promoted by relieving married couples of the bond where it is impossible for them to live together? Is it taking a higher or a lower view of marriage?—I think it arises from what Mr. Smith said in that address to us, the fact that the Puritan idea rejected to a large extent the necessity of a Church sanction, and regarded the marriage more in the nature of a civil contract. That is seen to-day in the fact that all the churches, and the clergymen of all denominations, are perfectly willing to re-marry the parties who have been divorced, except the Roman Catholic Church and the Episcopal Church. But you must remember that the Episcopal Church is very small in America in numbers. The great churches are the Methodist, the Presbyterian, and the Congregational Churches; therefore, it is a small number of the Protestant clergy of America that refuse to marry the parties, no matter what ground they have obtained divorce upon. It is enough that the court has dissolved the contract of marriage.

23,923. Would the Episcopal Church of America be smaller in the Puritan States than in the other States?—Yes.

23,924. Do you suppose the American conscience generally is awaking to the evils of easy divorce? Is there a change of feeling in that direction?—It is shown in these conferences, that represent the best public opinion in the United States. Public opinion is very anxious that divorce shall not be granted for trivial causes, or by collusion, or by fraud, and wants the laws to be so uniformly revised that that will be hard to do, but we still believe in divorce for causes such as are set out in this Bill, which has been practically agreed upon by the Commissioners, that is to say, the overwhelming sentiment in the United States justifies and desires an opportunity for divorce on more grounds than adultery, such as desertion, habitual drunkenness, conviction of crime, gross felony, and so forth. The causes they do not want to remain on the Statute are causes of incompatibility, that the parties cannot live together amicably as husband and wife, which appear in one or two, that the husband has been convicted of vagrancy, in two or three of them, and a man may be convicted of vagrancy in some of our States if he is out of work for a week or two and does not show any visible means of support, although he may be an honest fellow.

23,925. It would not be correct in theory to say divorce can be obtained for incompatibility of temper in America?—That it should be?

23,926. It would not be true in theory, that is to say, no judge would grant a divorce simply on the plea of incompatibility of temper?—He would in those States whose Statutes say so.

23,927. There are States?—Yes, there are States where that is one of the express grounds in the Statute.

23,928. Are there many States?—No, not many; four or five States.

23,929. I gather a great many of your difficulties arise from what this conference is attempting to remedy, the varying laws with regard to divorce in the different States?—Yes.

23,930. You name as two points of agreement this conference is likely to settle, felony (sentence of two years), and two years' desertion. Would it be your opinion that term is long enough in those cases?—Yes, I think so. The words "two years for felony" were put in on account of the construction of the word "felony" in most of the States. In most of our States by Statute "felony" is declared to be a criminal act punishable by imprisonment in a penitentiary, and a misdemeanour is punishable by fine or imprisonment in a gaol, a local or a county gaol. A man might be sentenced to the penitentiary for six months, and he would be under a conviction of felony, and they thought that was not a long enough term; in other words, the mere conviction of felony, which is in nearly all the Statutes,

being a ground of divorce. They have added "two years" because it was possible to be convicted of felony and not be imprisoned for more than three or six months.

23,931. (Mr. Spender.) Could you tell us a little more about the practice of American newspapers in regard to the reporting of divorce cases? Is it customary to report them at length?—No. I have noticed a great difference between the reporting of cases of law in London and our papers. The reports here, from what I see from my experience, and I was once an official law reporter myself for a short time, the legal reports in the newspapers seem to be written by lawyers—they look like it—and I judge from that that the newspapers employ for their legal reports men who have studied law, men who have been admitted to the Bar or solicitors. Our reporters at home who attempt to report our legal proceedings are not trained in the law, and they are looking entirely, not for a correct statement to the public of the case, but for something that people will read, and which will make a sensation. Therefore, the evils exist which I have referred to. They are not given such a free hand that they could bring into the newspaper office anything which would subject the publisher to a prosecution for publishing an indecent account of a thing, but they bring in something that will be funny, and something which discredits the courts, as those cases I spoke of, where divorce is granted on the ground of desertion, and the wife having testified her husband snored. They publish in great headlines, "Divorce granted to a woman because her husband snored too loud." That is the worst thing in our newspaper reports of divorce cases; they bring the court into contempt and disrepute, but there is no complaint in regard to the publication of the divorce proceedings as it is done. Now and then they go fully into a divorce case where the parties are well known, but they do that in a murder case or any criminal case.

23,932. If there is a sensational divorce case between well-known parties, that is reported fully?—Not fully. We have not such full reports as I notice in your English papers.

23,933. In our country it is done by an ordinary staff of reporters. In your country it may be done by the same, apart from expert legal reporters?—Our reporting is done by men who report everything else, cattle markets and everything that they are called upon to do; it is not done by men who have any special knowledge of legal proceedings.

23,934. What is the cause of the reporting of these cases in America being on a smaller scale than over here, because they are done, I think I may say, by the same class of reporters, the non-legal reporters in both countries?—They are done here by non-legal reporters?

23,935. That class of case is done largely by them.

23,936. (Chairman.) There is only one professional reporter in the Divorce Court, for "The Times." A barrister usually reports. I think the others are in the journalistic profession?—I can answer by saying very few of the cases are reported.

23,937. (Mr. Spender.) Even if the parties are conspicuous people?—Yes. For example, I should say on the day a judge gave a decree of divorce in St. Louis, having heard the testimony, sitting for a week or two, he would give judgment in them all on one day, and he might give judgment in 30 cases. The newspapers would pay no attention to that.

23,938. Even if well known?—Unless there was something special. There might be one case where the parties were well known in the States, or some very peculiar circumstances, and then they would report it, but it would not be a correct report; it would be a sensational report. It would not be intended to be in any sense gross or obscene, even if there were adultery; it would be rather a report to interest people by some of the amusing things in it.

23,939. You spoke just now of the newspapers being possibly made liable to a prosecution for indecency. Would the prosecution lie under American law against a newspaper which reported details of an ordinary divorce case? Do you think it possible?—It would be

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[Continued.]

very hard indeed to bring a newspaper into a State court on a charge like that, but the newspaper is very much afraid of the United States law on the subject. The United States law makes it a crime to send through the mails any paper or any document or paper containing indecent matter. Under that law if one copy has got into the mails and the United States authorities choose to prosecute, then they are prosecuted in the Federal Courts, and they are apt to be convicted.

23,940. You think a newspaper reporting a divorce case without exaggeration, reporting what you may call the ordinary incidents of divorce cases, such as you frequently see in the papers in this country, might be by that process liable to a prosecution for indecency in your High Court, and be convicted on that?—Yes.

23,941. Have cases actually occurred?—Yes, and I think that more than anything else keeps the newspapers from publishing things of that character.

23,942. You spoke of the detailed evidence being taken before a master sometimes, and passed on by him eventually to the High Court?—Yes.

23,943. That procedure is secret before the master?—Yes.

23,944. Is it found that people who wish to escape publicity of details try to obtain that procedure?—Yes.

23,945. That is the result of it?—Yes. They cannot do it in any of the Western States, only in New York and a few of the States which permit referring to the master the taking of the evidence and the report. In most of our States the evidence is required to be taken in open court.

23,946. Would you say publicity, according to your experience, acts as a deterrent?—I think so.

23,947. People are afraid?—I do not think there would be more divorces among the people who form the large majority of applicants for divorce. I do not think the ordinary man who gets his divorce, or the woman who gets her divorce for 10 or 20 dollars, 5*l.* or 10*l.*, cares for that, but I think among the more respectable class of society and a little higher class of society, publication is a deterrent.

23,948. In regard to the rest there is no publicity?—There is no publicity at all; a reporter would not

take any notice of it. All that appears in the case would not appear in the newspaper; it would appear in semi-official papers, just the name of the parties and the fact the decree was granted.

23,949. To go to one other point, roughly in how many of the States are the conditions equal as between the sexes in regard to adultery?—All of them.

23,950. Practically all?—I know no difference in regard to that. I do not think there has been any in the divorce legislation.

23,951. There is no State which is an exception to that rule?—No; adultery is the ground of divorce. It is available to both parties as a ground.

23,952. Do you say the equality of the sexes is one of the causes for the increased number of divorces?—Yes, I think it has a good deal to do with it.

23,953. You mean that the woman having the remedy, she takes it?—Yes.

(*Chairman.*) I ought to have said, when I spoke about reporters, there are barrister reporters for the law papers, who merely report legal points.

(*Mr. Spender.*) I wished to make the point that the conditions were roughly parallel between English and American newspapers.

23,954. (*Chairman.*) There is one question on a point that has not been put. You said you were a member of the church which corresponds in this country to the Church of England, that is to say, the Anglican community?—Yes.

23,955. Can you tell us whether, with the exception of the Roman Catholic Church, whose views no doubt prevail in America just as much as here, there is any section of the community in America which bases its regard for divorce on the question of indissolubility?—I think not.

23,956. May I take it, as far as you know, with the exception of the Roman Catholic Church, all the churches in the country accept the view that marriage is dissoluble?—That is my opinion.

(*Chairman.*) I ought to thank you very much indeed for your evidence. I am sure it has been of great assistance to us, and it is very kind of you to have taken so much trouble about it.

(*Witness.*) I have been pleased to do so.

Fru ELLA ANKER called and examined.

23,957. (*Chairman.*) I think you are the sister-in-law of Herr Castberg?—Yes.

23,958. The Ex-Minister of Justice in Norway?—Yes.

23,959. He is the author of the new divorce law in Norway?—Yes.

23,960. Are you in England at present as the political correspondent of one of the leading Radical papers in Norway?—Yes.

23,961. You have been good enough to prepare a memorandum on the state of the divorce law in Norway?—Yes.

23,962. I am not sure whether you speak English as well as we do. Perhaps you would find it more convenient to read the memorandum?—Yes, I should think that best.

23,963. You have sent in a new one to-day slightly amended. Will you read it?—Yes, the divorce law in Norway came into force on the 1st of January 1910. Marriage is founded on the principle of free will and mutual consent, and the divorce law makes man and woman equal in rights and responsibilities. If the two parties agree to demand separation, they need no lawsuits or complaints against each other. Separation is their legal right and is granted by an Amtmand. That is a local administrative authority.

23,964. What we call a magistrate here, I suppose?—No, I do not think it is the same as an English magistrate. It is a sort of local administrative authority.

23,965. It has nothing to do with religion?—No. If husband and wife do not agree to demand separation the one party can demand separation if the other party has been unfaithful; is a drunkard, neglects his duty of supporting his family, or if there has arisen such strong incompatibility between them that it

cannot in fairness be claimed that the marriage shall be continued, when regard is taken for the welfare of either party and of the children. The Ministry of Justice in these cases decides the question. The Amtmand, under appeal to the Ministry of Justice, settles which of the two parents shall have the children and arranges the economic part of the case. When both parties want separation the marriage is dissolved by the Ministry of Justice after one year. If one party only wants it the marriage is dissolved after two years after the separation; it may be either by the court or the Ministry of Justice. After the divorce either party can marry again at once. Divorce is granted by the Ministry of Justice without preceding separation if the two parties have been *de facto* separated for three years, and if one party has been insane for three years on the declaration of the physicians that there is no chance of recovering. In some cases divorce is granted by the courts, that is the local judge with court proceedings, without preceding separation: (a) if one party unknown by the other party before the marriage has a fault that makes him or her unfit for marriage or suffers from contagious disease, or has been insane, or is with child by another. Divorce by the court and the judge is also granted without preceding separation if, (b) one of the parties has been guilty according to the criminal law, of violence, ill-treating and so on, and (c) or of desertion for two years.

23,966. You have put that in?—Yes, it must be added. In all these cases where divorce is given without preceding separation a man can marry again at once after the divorce; a woman is not allowed to marry again till after 10 months. The divorces before the court are quite exceptional. All courts are competent to judge in divorce cases. All divorces are preceded by mediation by the Conciliation Com-

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[Continued.]

mittee, a fixed institution for all sorts of disputes that may lead to causes elected by the County Council. The members may be women, and mostly there are some women in this Conciliation Committee as it is called. If one of the parties prefers mediation by a clergyman it shall be allowed. Before we got this law of divorce, there was no law of the kind in Norway. The divorce cases were settled by the King, in reality by the Ministry of Justice, according to a practice that has varied at different times. During the last twenty years, the practice has always been to grant separation when the two parties agreed upon it. If they had no charges against each other for unfaithfulness or strong ill-treatment, they might put forward incompatibility as a reason.

23,967. In my copy I have, "If they had no charges against each other for unfaithfulness, desertion, or strong ill-treatment?"—Yes, that is right. Also, if only the one party wanted the separation the practice has mostly been to make the separation easy, if the one party has insisted upon having it, but no marriage could be dissolved till after three years separation. The new law is thus only a confirmation of the practice of twenty years, so one can already judge of the effect of the facility for separation and divorce. In spite of the easy admission to separation there are comparatively very few divorces in Norway. During the first years of this century the yearly number of divorces for every 100,000 marriages is in—

Norway	-	54	Denmark	-	89
Sweden	-	48	France	-	103
Hungary	-	59	Switzerland	-	190
Belgium	-	60	United States	-	250
Germany	-	79			

(Mr. Brierley.) I was wondering whether that figure of 250 is accurate, because evidence has been given that in the United States it is 73 per 100,000. It is an extraordinary difference.

23,968. (Chairman.) Will you tell us what you took those figures from?—From the Minister of Justice. I think it is taken from a Belgian report.

23,969. You have not the report here?—No.

23,970. (Mr. Brierley.) It seems to be such an extraordinary difference?—That is the number for 100,000 marriages.

(Mr. Brierley.) This was 100,000 of the population. Mr. Crane said in the United States that it was 73 per 100,000 of the population. In Germany it was said to be 15, and in France 25.

(Chairman.) Did he give it of 100,000 marriages?

(Mr. Brierley.) No, 100,000 of the population.

(Chairman.) That would be very much larger.

(Witness.) This is 100,000 marriages.

(Mr. Brierley.) That may account for it.

23,971. (Chairman.) You have had these figures from the Minister of Justice?—Yes. Money considerations do not play any great part in the formation of marriages. Young women of all classes are educated for work and accustomed to earn their own living, they need not marry to get their living. Many continue their work when married, and they may to a large degree trust to their own abilities if they should be left alone through the death of a husband or through divorce. The women do not generally bring a "dot" with them when they marry. The bride's family generally provides some part of the furniture, that is all. As the marriages generally are formed in affection, and on an earnest desire to make a good home for each other, the natural feeling between man and woman may be trusted to prevent separation unless there are very grave reasons for it. The natural feeling of responsibility to each other, and especially to the children, causes them to do their best in the marriage, and try all possibilities before they break up their homes. The Norwegians are mostly religious by nature and do not change their minds easily. The women are educated up to the same level as men, so they really can be the true partners of their husbands. Education, general and technical, is open as freely to women as to men. Co-education accustoms the women to the company of men, and in consequence of this they are more discriminating than they would otherwise be with regard

to the men whom they choose. Husband and wife are united by such strong natural ties, as well as by common interests and work, that the law can trust the marriages to last. I think that the divorce law and the practice of the late twenty years has been all to the good. The easy admission to divorce is beneficial for the morality of marriage. Either party feels it necessary to do their best to make a good home and retain each other's love. If anything can keep a drunkard from his vice it is the fear of losing his home and children, and the wanton and slatternly woman exerts herself more to make the home nice and comfortable in order that her husband may not be tempted to leave his home. It is only good that both parties know that they do not possess each other as a property. A man or a woman is a living soul that must be won all the time over again through love; that stimulant is only good, and gives a freshness into the relation between them. Formerly a husband knew that however he treated his wife she was his, it was a temptation to all the brutal instincts, a temptation that now is somewhat diminished. Separation and divorce are generally regarded as a most serious and distressful event, but the divorce in itself is not considered a shame—as in many other countries. The real causes of an unhappy marriage are so complicated and individual that no outsiders can dare to judge it. When such deep incompatibility between husband and wife arises that they seek separation, we do not think it right that the law shall make the burdens of an unhappy marriage heavier than they already are, by forcing the marriage to be continued or making the case a public scandal by the publicity in the Press. I have forgotten to say that it is forbidden by the criminal law to give any report to the Press, and all court proceedings go on with closed doors. Especially in regard to the children the publicity is very unjust and injurious—nay, we think it almost barbarous, that the most intimate affairs of family life and personal distress shall be laid open to public sensation. Through the easy divorce, release has been given from many whited sepulchres of sorrow and immorality, and many men and women have been saved to use their abilities and find happiness in other marriages. If the number of divorces has somewhat increased in the later years in Norway, it is a natural result of the women's increased feeling of self-respect, and represents a higher standard of morality and a stronger feeling of responsibility to the coming race. They begin more and more to think that their first duty in marriage is to give birth to healthy children, born in love. They do not think it moral to bear children to an immoral father or to a drunkard, or to a man whom for a thousand individual reasons they no longer honour or love. It is the deepest moral and religious feeling of woman, that she wants love and happiness alone to be the origin of her child. Even if she herself wishes to be patient to the utmost degree to an immoral husband, she does not think it right that the children shall grow up in a home in the daily sight of brutalities or ill-treatment, or a home where there is no mutual affection. According to the statistics for the years 1905 to 1907, the most general causes of divorce are:—

	1905.	1906.	1907.
By mutual consent	66	57	89
Adultery	54	42	68
Desertion	38	51	59
Separation <i>de facto</i>	44	39	48
Insanity	11	9	14
Alcoholism	3	1	10
Crimes	4	3	6
Bigamy	2	1	3
Impotence	2	—	—
The wife with child by another	1	—	—
Supposition of death	2	4	4
Veneric disease	1	—	—

The next is *spedalskhet*. That is a disease, I do not know the name of it.

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23,972. Should we call it in England a venereal disease?—No, it is a very contagious disease in the Bible.

23,973. Is it leprosy?—I should think it is. It is not very uncommon in Norway.

23,974. Norway has leprosy, but we have not?—We have it in some degree. There was one case of spedalskhet in 1906, and there was one case of venereal disease in 1905. The total in 1905 was 228; in 1906, 208; in 1907, 301. The preponderating cause of divorce is by mutual consent. Then comes unfaithfulness and desertion. The yearly number of divorces by the administration was as follows:—In 1905, 228; in 1906, 208; in 1907, 301; in 1908, 279; in 1909, 349. For the last half year it was only 128. In the official statistics of the years 1901 to 1904, in the majority of divorces, the fault is on the side of the husband in 54·2 per cent., on the side of the wife in 37·3 per cent. and on the side of both in 8 per cent. In the majority of divorces on the ground of adultery the fault is the wife's. There are, upon the whole, 524 cases, and it has been the fault of the husband in 242 and the fault of the wife in 256. It may be that the wife forgives the husband more often than the contrary is the case, so you cannot rely upon these numbers. The half of all divorces is between the labourers. There need not be any expense connected with divorce proceedings in Norway. The divorces before the Ministry of Justice, that are the rule, are completely gratuitous. No lawyer need be employed. Even in divorce cases before the courts it is not necessary to employ a lawyer. But should well-to-do people wish to do so the expenses may come to from one to five pounds. A poor man's expenses in such a case are paid by the State. If he is not a guilty party the State pays the expenses. We do not think it right that separation shall be a privilege for the rich. The poorer classes have not so much help or means to find compensation in other things when their family life is destroyed, as the rich have it. They are obliged to live nearer to each other, and thus the trouble grows more painful. It has been a great improvement in the new law that the time for separation is decreased from the three years to one year, in case of agreement between the two parties, and to two years in case of non-agreement. The former delay of three years only keeps open the sore of the husband and wife that has been left alone by the separation, and it weakens the power of finding new work and happiness in the future. Previous to such a serious step as to demand separation there has generally been so great unhappiness that I should think it just and good to either party that the question is settled as soon as possible. If the cause of divorce is the love to another man or woman, the two lovers generally do not respect the law that compels them to live apart from each other for three years. They find, of course, a means of being happy together, so the earlier law only produced hypocrites and law breakers. The most difficult thing is to settle about the children, and no law can take away the painfulness of all these relations. If the parents do not themselves agree upon the question, the local administration or the judge shall settle the matter. The guilty party must generally give up his children, but the other party mostly gives permission to his consort to meet the children at appointed times or in each other's homes. The contracts between husband and wife that must be finally settled by the authorities, vary to the more or less good feelings they still bear to each other. It is a natural feeling that a wife wishes her children to love their father, and mostly the wife is very generous in permitting her children to visit their father even if she has been grossly treated. If the father marries again, the wife seldom permits the children to come to the new home of their father, but she may let him come to see the children in her home. In all these cases there is no absolute rule, but the authorities are to take most regard to the children and their welfare. They are always obliged to consult a committee of guardianship. That is a fixed institution, a committee that shall take care of all neglected children. Generally, if there are very small children, they follow the mother, even if she is the only guilty party. At the divorce their common property is

divided alike in two halves between them. In case of divorce by court in the cases given under (a), the party that wants divorce can demand first all he or she has brought into the marriage, or inherited after the marriage, before the property is divided. Both parties are obliged to support the children according to their economic conditions. As a rule, the husband is obliged to give a support to the wife as long as she does not marry again, but if the wife is the only guilty party he can be relieved of this duty. If the husband is unable to earn his own living, and the woman has more than is necessary for her support, she is obliged to support him if he is not the only guilty party. The divorce law is based not so much on dogmas and theories about the idea of marriage as on practical humanity, trusting to men's and women's own sense of responsibility in the serious relations of life. As your great poet Milton says, "Honest liberty" is the greatest foe of dishonest license."

23,975. Can you tell us in two or three words what are the real changes produced by the law of January of this year?—The greatest difference is that the separation now may be one or two years.

23,976. Instead of three?—Instead of three. And the rule that "if there is such a strong incompatibility" between them that it cannot in fairness be claimed "that marriage shall be continued, when regard is taken to the children as to either party," as a divorce cause. Those are the two essential improvements.

23,977. Does it come to this, that in Norway marriage is capable of being dissolved by mutual consent after a short period of time?—I do not understand you.

23,978. Do you know what mutual consent is?—Yes.

23,979. Is it the rule that marriage may be dissolved by the mutual consent of the two parties?—Yes.

23,980. After a certain length of time has elapsed, one or two years?—That is a rule. That is not only the rule but that is their legal right.

23,981. If there is no consent it can be dissolved for several causes at the wish of the person who complains?—Yes.

23,982. Which are those principal causes—unfaithfulness?—Unfaithfulness or neglect to support.

23,983. Cruelty?—Yes, cruelty and desertion.

23,984. And insanity?—Insanity for three years and separation *de facto* for three years, and if he has been punished by imprisonment for three years.

23,985. That amounts to this, that in Norway there is great facility for divorce?—Yes.

23,986. Both as regards causes and as regards the expense being very little?—Yes.

23,987. Do you think that is against the good interests of morality in Norway?—I think it has no influence on the good marriages but it strengthens the weak marriages and dissolves the unhappy ones.

23,988. It strengthens the doubtful ones?—Yes.

23,989. It makes the two parties behave better. They do not, as you say in your proof, see each other as their own property?—No, they treat each other better when they have more fear of being separated.

23,990. (Mr. Brierley.) Divorce can come about by mutual consent in this way. First of all, let me ask you this. Do they first have to give notice that they have separated by mutual consent, or do they simply separate?—No, they get their separation order without giving any charges.

23,991. They go to the court and get an order?—They go to the Amtmand to get the order, and after one year the divorce is given by the Ministry of Justice.

23,992. At a matter of course?—Yes.

23,993. I notice that you say there must be a mediation of the clergyman and the magistrate. Is that when the separation order is applied for?—That is in all divorce cases before the separation. The local authority, the Amtmand, sends them to the conciliation committee, but if they do not like to go before the conciliation committee they can say that they want to be mediated by the clergyman instead.

23,994. I understand the law is that practically there is divorce in Norway by mutual consent, and also

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without mutual consent, on a good many grounds. Have the clergy in Norway opposed this law?—No.

23,995. Does it meet with their approval?—The minister of church has had some considerations about the time being only one year and not three years, but the clergy have not opposed it on the whole.

23,996. They have not raised any religious objection to divorce being granted on this ground?—No.

23,997. What Church do the people of Norway mainly belong to?—To the Lutheran Church, although there may be some other clergymen.

23,998. The great body of the people are members of the Lutheran Church?—Yes.

23,999. (*Lady Frances Balfour.*) The franchise has been granted to the women of Norway?—Yes.

24,000. Had they used their vote before this law was passed?—No, it was passed before the political vote was used.

24,001. What is the franchise for women there? What is the qualification?—We have adult suffrage for the county councils, and political suffrage if a woman pays taxes on an income of at least 20*l.* a year, or if her husband pays the same taxes. The married women are included.

24,002. The franchise for women was in sight when this law was passed. It had been granted to them, but they had not exercised it?—They have exercised the vote.

24,003. For Parliament?—Yes, this last autumn.

24,004. This law was passed before that?—Yes.

(*Chairman.*) You said January of this year.

24,005. (*Mr. Spender.*) That was when it came into force?—It was resolved in August 1909. The franchise was given in 1906; the Divorce Law passed August 1907; the first women election October 1907.

24,006. I think you said that most of these causes had been in operation for the last 20 years?—Yes, practically they have been used.

24,007. Could there be a divorce by mutual consent any time during the last 20 years?—Yes, almost all cases by mutual consent were granted, but there was no law. There was the law, but that did not include all the causes. The practice had arisen instead of the law, and the practice was to grant separation by mutual consent.

24,008. Was the law in Sweden the same?—They have a rule of invincible hate or dislike to each other. That is a cause of divorce in Sweden.

24,009. You used to have two separate laws for Sweden and Norway?—Yes, of course. That is quite another country.

24,010. (*Chairman.*) Do you know who sent your name to the Commission?—Miss Llewellyn Davies.

24,011. Do you know who asked her?

(*Lady Frances Balfour.*) I suppose it was Mrs. Tennant.

24,012. (*Chairman.*) It was Miss Llewellyn Davies who suggested you should come?—Yes.

24,013–24,013. (*Chairman.*) I must thank you very much for your evidence and for the extremely accurate way you speak the language?—Thank you.

(*Chairman.*) Before we rise I want to make a statement which the Press will take notice of. It will interest you to learn that we have had a set of sittings extending from the 23rd May, and that we have examined 80 witnesses, and that together with those examined during the previous set of sittings, namely, 62, it makes 142 witnesses altogether. I think it is worth while mentioning that, because on the last occasion some confusion was made by a newspaper, or some writer, as to the number that we had, and conclusions were drawn from it. I should like to present to those who convey what is going on to the public the exact facts. I also want to say this. On the 4th March I stated as follows:—The Commissioners have communicated through their Secretary with as many representative bodies of people as it was possible to discover who may give useful information to the Commissioners, but it is not possible to be certain that all the bodies who may assist the Commission have been communicated with. Some may be unknown to us, therefore I desire to say that if anybody wishes to send a representative, or who has information that will be useful to the Commissioners, it will be desirable that they should communicate with the Secretary. I wish to repeat that as a matter of public notification, because I have had one or two letters which suggest that we have not invited this body or that body, but the bodies were unknown to myself and the Secretary, and therefore we could not communicate with them. I wish to make it plain that we are desirous that any body of people who have real information which would be useful to us should, if they think fit, send a representative, or rather communicate with the Secretary, with a view to sending a representative if their evidence is to be tendered. I should like to make this further statement, that I have received a very large number of letters from individuals stating their own cases, but it has been decided by the Commission, a long time back, that it would be practically impossible for us to investigate everybody's particular case. It may be satisfactory to those who have written to know that all those letters will be duly presented to the Commissioners as soon as they have been properly sorted and arranged, and that they will be carefully considered by them.

Adjourned.

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